The View from Washington State

Work of the International Commission on Holocaust Era Insurance Claims (ICHEIC)

The "Value" of Memory "Discounted"

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Washington State Insurance Commissioner

THE "VALUE" OF MEMORY "DISCOUNTED": ICHEIC AND HOLOCAUST ERA INSURANCE CLAIMS

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EXECUTIVE SUMMARY

The International Commission on Holocaust Era Insurance Claims (ICHEIC) was established in August 1998 as a world-wide effort "to resolve outstanding claims on insurance policies held by victims of the Holocaust." While considerable progress has been made, many of the same problems identified in earlier reports by the Office of the Insurance Commissioner (OIC) on the status of the Holocaust-insurance issue and the work and progress of ICHEIC remain.

As of October 29, 2004, ICHEIC had received 79,836 eligible claims. 5.9 % all claims (4,724) have received offers totaling $74.49 million. An additional 16,179 claimants qualified for and received humanitarian payments of $1,000 per claimant for a total of $16.2 million.

As of publication, 58.3 % percent of all claims are still waiting to be processed, yet ICHEIC is scheduled to complete all claims processing by the end of 2005, with all appeals to be concluded by the early part of 2006. At the current rate, the processing of all claims will not be completed until early 2007.

According to the latest monthly report dated September 20, 2004, Washington State has filed 760 claims with ICHEIC and an additional 168 claims were filed directly with ICHEIC – claims which, because of "privacy concerns" have not been shared with the OIC. Twenty-three of those claims have received offers and 189 have been denied. Few of the claimants receiving denials have received a detailed explanation as to why their claim was denied despite ICHEIC rules requiring such notification. Sixteen of Washington State's 195 claimants have received offers of payment totaling $260,046. An additional 52 claimants have received $1,000 humanitarian fund payments for a grand total of $312,046 paid to Washington's claimants.

A significant number of Washington claims submitted to ICHEIC appear to have been missing or lost and then replaced. The fact that *any* claim would be missing or gotten lost, let alone an unknown number of claims, raises significant concerns regarding the oversight of ICHEIC and the claims process.

The "amalgamation" or combining of claims from the same claimant is an additional concern because of the possibility that combining claims has resulted in "dropped" names or inaccurately entered names.

As the claims process approaches its final days, it has become clear that some claimants might have been better off *not* naming a company. If they had not named a company, their claims would have been reviewed by *all* companies selling insurance where they or their families lived. Because of ICHEIC rules, their claims are prevented from being researched further by other companies, ruling out the possibility of finding a match and a resultant offer of payment.

Denials on named claims are presently running nearly 2 to 1 over offers. In many cases those claimants who possibly named the wrong company may never learn whether their family in fact had a legitimate claim.

ICHEIC should take the additional time (a projected matter of weeks) to verify the accuracy of a company's response *before* an offer or denial letter is sent to a claimant. ICHEIC staff asserts that any added time would "disrupt" the verification system.

It has been argued that additional research would require extending the life of ICHEIC and result in costs that ICHEIC has not budgeted for. However, the necessary funds already exist in the claims fund; what better purpose could the claims money serve than to process and resolve claims? Finances should not be the only consideration for when ICHEIC shuts down. Claimants were promised their claims would be resolved *to the extent possible* and ICHEIC should honor that commitment.

As a compromise, ICHEIC's Operations Committee has recommended, and Chairman Eagleburger has accepted the recommendation, that "named claims denied on the grounds of no match or insufficient proof [will] be transferred to the 8A [humanitarian] system." But even with this compromise, an entire category of claims will potentially remain insufficiently researched, underpaid and ultimately unresolved; they will remain "unfinished business" for ICHEIC and for the companies.

According to ICHEIC rules, "a claim that names no company, but is supported by documentation or other credible information substantiating the existence of insurance would qualify for a humanitarian payment," as would claimants "with evidence of policies issued by companies no longer in existence." Humanitarian payments have been increased to $1,000 to be paid on a per claimant, rather than per claim, basis. OIC believes a claimant with more than one meritorious claim should receive payment for each claim found to be meritorious. In March 2004, 15,890 qualified claimants received humanitarian payments of $1,000 for a total of $15.89 million.

ICHEIC's written 'valuation guidelines' could not have anticipated every possible processing issue. If the guidelines are found to be incomplete or subject to interpretation and possible revision, any such questions were to be referred to and clarified by an ICHEIC "Valuation Committee." The Valuation Committee has not met in several years.

In addition to the humanitarian fund distributions noted above, ICHEIC is also "exploring a small number of other worthy projects that have been presented to us…with most of the funds available for humanitarian purposes…reserved for the benefit of needy Holocaust survivors worldwide." So far, ICHEIC has agreed to fund two pilot projects and is reviewing a third. While all three programs are worthwhile, only one meets ICHEIC Chairman Eagleburger's criteria of "assisting needy survivors worldwide."

There is a potential conflict of interest when the same organization which reviews and approves humanitarian payments also will heavily influence the use of any remaining funds in the humanitarian fund considering that the less money distributed through humanitarian payments to claimants the more will be left for "other purposes."

In 2003, ICHEIC committed $132 million, "to the extent ultimately available, for social welfare benefits to Jewish victims of Nazi persecution, to be distributed over a 10 year period." The time

frame was later reduced to nine years. Two yearly distributions totaling approximately $32 million have been made.

A second category of claims – claims on companies in Eastern Europe that were nationalized, liquidated or where there is no identifiable successor company – is presently being evaluated. First payments of $2.3 million on 128 policies went out in October 2004.

OIC and other regulators often cannot find out from ICHEIC/companies why a claim that was filed as a result of a name appearing on the ICHEIC website list is not a match. ICHEIC, on behalf of the companies, cites "privacy considerations." By not providing an explanation, the companies are effectively denying claimants their right to an appeal.

According to the latest ICHEIC Quarterly Report (October 2004), all company operations have "been declared Stage 1 compliant with the exception of Generali;" "Stage 2 audits cannot begin until compliance has been achieved under Stage 1." Claimants can only appeal a company's decision after the company has issued a final decision and a company can only issue a final decision letter after its audit has been completed.

There are several problems with the current ICHEIC appeals process: the high cost of three different appeals processes, insufficient interaction between the three processes to assure the same standards, etc. are being applied, poor communication to claimants and the lack of a mechanism for retroactively applying new decisions on previous decisions.

ICHEIC is scheduled to complete processing all claims by December 2005. It is therefore possible that all audits will not be completed until after the claims processing is completed – too late to have a significant impact on claims processing. In addition, there is no mechanism to retroactively correct any processing mistakes or significant omissions that may have affected some claims.

A full discussion by U.S. regulators of many of the issues raised in this report has been limited or curtailed. Participating Jewish groups are often seen as the "barometer" of legitimacy. While some U.S. regulators have viewed the questions we have raised as consumer issues, efforts by those regulators to reform ICHEIC have been met with a reluctance to get involved in disputes among the various interested Jewish groups.

Communication between ICHEIC and U.S. regulators has improved significantly over the past year, yet it can still take an inordinately long time to get specific answers from ICHEIC – time older claimants do not have. For the most part, regulators continue to play a marginal role in ICHEIC's decision-making process. In order to enhance the credibility and transparency of ICHEIC's work and to ensure the original commitment to claimants has been met, the regulators should call for and participate in an independent audit of ICHEIC.

I. INTRODUCTION

In February 2000, the International Commission on Holocaust Era Insurance Claims ("ICHEIC") launched what it described as a world-wide effort "to resolve outstanding claims on insurance policies held by victims of the Holocaust." ICHEIC was established in 1998 by the National Association of Insurance Commissioners (NAIC), six European insurance companies (Allianz of Germany, AXA of France, Generali of Italy, and Basler Lebens, Winterthur and Zurich of Switzerland), several Jewish organizations and the government of Israel to create "a just process that will expeditiously address the issue of unpaid insurance policies issued to victims of the Holocaust." In May 2000, the members of the Dutch Insurance Association also joined the ICHEIC. ICHEIC subsequently signed additional agreements with the German Foundation "Remembrance, Responsibility and Future" and the German Insurance Association (October 2002); with the La Commission pour le Dédommagement des Membres de la Communauté Juive de Belgique (Belgium, July, 2003); and the General Settlement Fund of the Republic of Austria (December, 2003).

According to its Chairman, former U.S. Secretary of State Lawrence Eagleburger, "We are guided by the principle that we want to be able to say that we have done everything possible to reach all potential claimants and pay Holocaust-related insurance claims in a fair and expeditious manner."[1]

Two years ago, the Office of the Insurance Commissioner (OIC) issued the fourth of a series of reports on Holocaust insurance, "Washington State Experience Update and a Review of the Work of the International Commission on Holocaust Insurance Claims (ICHEIC)." Since then, there have been several significant developments. The following is intended as a progress report on the work and accomplishments to date of ICHEIC and the status of Holocaust-era insurance related issues.

[1] "U.S. and European Regulators Launch International Effort to Settle Holocaust Victim Insurance Claims," National Association of Insurance Commissioner (NAIC) press release, February 15, 2000.

II. ICHEIC: BACKGROUND - REVIEW & UPDATE

In 1997, several class action lawsuits in American courts were filed against major European insurance companies for refusing to honor unpaid Holocaust-era insurance policies. These lawsuits brought the issue of Holocaust-era insurance to the attention of U.S. insurance regulators. Under the auspices of the National Association of Insurance Commissioners (NAIC), hearings were held in several cities around the U.S. to gather testimony about the experiences of Holocaust survivors and the families of Holocaust victims in their efforts to pursue claims on unpaid Holocaust –era insurance policies. The Commissioners also heard from the relevant insurance companies. In their defense, the insurers cited among other difficulties the lack of policy information and/or death certificates by claimants, their own lack of records, and the nationalization of the insurance industry by communist governments in Eastern Europe following World War II.

As a result of the lawsuits, the attention the issue was receiving from American insurance commissioners who were concerned about both the moral issues involved as well as the integrity of the industry – the companies in question were being accused of not honoring insurance contracts – and the threat of increased regulatory action, six major European insurance companies agreed to join an international process to deal with and comprehensively resolve these outstanding issues, thereby establishing ICHEIC.[2]

For nearly five years, the members of ICHEIC have worked to develop standards to evaluate claims, calculate the present value of decades-old policies, and monitor company compliance with agreed-on claims procedures. While considerable progress has been made, many of the same problems that hindered earlier resolution of these issues remain.

* * *

In 1938 there were some 56.1 million life insurance policies issues in the area of Europe occupied by the Nazis. An estimated 875,000 of these were Jewish policies, with an estimated face value (mid-2004) of about $19 billion, based on taking the 1938 dollar value of the $15.3 billion and adding on the annual yield of 30 year U.S. Government bonds – a conservative investment.[3]

As of October 29, 2004, ICHEIC had received 79,836 claims "eligible under the ICHEIC claims process,"[4] of which approximately 27.7 % name the company with which the claimant's family

[2] The six original companies were Allianz, AXA, Basler Lebens, Generali, Winterthur and Zurich. After several months Basler Lebens left the ICHEIC, and in May 2000 the member companies of the Dutch Insurance Association joined the commission. ICHEIC subsequently signed additional agreements with the German Foundation "Remembrance, Responsibility and Future" and the German Insurance Association (October 2002); with the La Commission pour le Dédommagement des Membres de la Communauté Juive de Belgique (Belgium, July, 2003); and the General Settlement Fund of the Republic of Austria (July, 2003).

[3] Zabludoff email, July 24, 2004.

[4] ICHEIC "Statistical report 041029." Considering the number of insurance policies held by Jews in pre-war Europe the relatively low number of claims received by ICHEIC is itself a questionable measure of success.

is believed to have had an insurance policy. To date, there have been 4,724 offers (5.9 %) totaling $74.49 million on ICHEIC claims, with an average of $15,768 per offer.[5] An additional 728 offers totaling $12.68 million have been made "by companies on claims not submitted through ICHEIC but using ICHEIC Valuation Guidelines," for a total of $87.17 million on 5,452 claims, with an average of $15,989 per offer. Finally, 16,179 claimants have qualified for and received humanitarian payments of $1,000 per claimant (see Section VI, Issue #6 below) for an overall total of $105.35 million.

Of the 22,115 claims that have been sent to a named company, 3,112 (14.1 %) have received offers, and 6,080 (27.5 %) have been declined. An additional 12,923 (58.4 %) are still pending with the company named, and 30,400 (55.8 %) of the 54,520 claims which do not name a company are still pending with all insurers that sold policies in the location where the family lived. Therefore, 58.3 % of all claims to date remain to be processed.[6]

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[5]According to ICHEIC's "Statistical Report 041029" of the 4,724 offers, 3,916 offers totaling $62.13 million, an average of $15,866 per claim, have been accepted and paid, with 819 offers totaling $12.61 million, or an average of $15,397 per claim, still outstanding. At the same time there have been 7,217 (9 %) declines, but since very few of these are "final" declines, that percentage undoubtedly will rise significantly.

[6] An additional 3,112 claims/inquiries have not yet been distributed, including "claims/inquiries on Eastern European nationalized companies which will be evaluated under the ICHEIC humanitarian process" (see page 43 below), and 89 claims/inquiries are still being processed.

III. UPDATE & RECENT DEVELOPMENTS

June 2003 Supreme Court Decision

In 1998, California enacted a law requiring the California Department of Insurance to develop a comprehensive program to resolve the insurance claims of Holocaust victims, survivors and their heirs (Section 354.5, California Code of Civil Procedures). The new law gave California courts jurisdiction over claims by California claimants and extended the statute of limitations for filing a claim until December 31, 2010.

That same year a second law (Section 790.15 of the California Insurance Code) was passed requiring the Commissioner of Insurance to "suspend the license of any insurer if it or one of its affiliates fails to pay 'any valid claim' on a policy issued to a person who was "a victim of persecution of Jewish and other people preceding and during World War II by Germany, its allies, or sympathizers."

In October 1999, the Holocaust Victim Insurance Relief Act ("HVIRA," California Insurance Code §§13800 -13807) was passed, requiring the Insurance Commissioner to establish and maintain a registry regarding insurance policies issued in Europe to victims of the Holocaust during the Nazi period.

In April 2000, just prior to the registry provision taking effect, "HVIRA" was challenged in federal court by several affected companies and the American Insurance Association. They asserted that insurance commissioners did not have the authority to require them to provide information about company business practices outside of the state that he or she regulates.

In a ruling in June 2000, in the Eastern District of California, an injunction was granted preventing enforcement of the statute.[7] The decision was appealed by the state. On February 7, 2001, the 9th Circuit issued an opinion dismissing two of three challenges to the California law and finding that the law did *not* interfere with the ability of the federal government to conduct foreign policy nor violate the Commerce Clause of the U.S. Constitution by obstructing international commerce. A third issue – due process – was sent back to the original court, which once more found in favor of the companies.[8] The matter was again appealed before the 9th Circuit, where oral arguments were heard in May, 2002. Washington State filed an amicus brief in support of California, maintaining that it is constitutional for states to require international insurers or holding company groups to provide the names of their policyholders on Holocaust-era policies issued by their European affiliates.

In OIC's opinion, overturning state law in this case would potentially have a ripple affect across the nation, effectively diminishing the authority of insurance regulators to regulate unfair

[7] Gerling v. Low, U.S. District Court for the Northern District of California.

[8] Decision of Judge William B. Shubb, U.S District Court, Eastern District of California, *Gerling Global v Harry Low, No. CIV. S-00-0506 WBS JFM.*

business practices,[9] and would close one more door that victims and their heirs had to any chance at resolving their claims.

* * *

On June 21, 2003, the U.S. Supreme Court ruled in a 5-4 decision in *American Insurance Association v. Garamendi* that California's HVIRA "interfered with the President's conduct of the nation's foreign policy and was therefore preempted."

In its decision the Court wrote:

> The basic fact is that California seeks to use an iron fist where the President has consistently chosen kid gloves. We have heard powerful arguments that the iron fist would work better, and it may be that if the matter of compensation were considered in isolation from all other issues involving the European allies, the iron fist would be the preferable policy. But our thoughts on the efficacy of the one approach versus the other are beside the point, since our business is not to judge the wisdom of the National Government's policy; dissatisfaction should be addressed to the President or, perhaps, Congress. The question relevant to preemption in this case is conflict, and the evidence here is "more than sufficient to demonstrate that the state Act stands in the way of [the President's] diplomatic objectives" *Crosby*, *supra*, at 386.[10]
>
> …it is worth noting that Congress has done nothing to express disapproval of the President's policy. Legislation along the lines of HVIRA has been introduced in Congress repeatedly, but none of the bills has come close to making it into law… In sum, Congress has not acted on the matter addressed here. Given the President's independent authority "in the areas of foreign policy and national security, congressional silence is not to be equated with congressional disapproval.[11]

According to Washington State Insurance Commissioner Mike Kreidler, "The Court's decision severely impedes states' ability to protect their citizens. With Holocaust survivors dying at a rate of ten per week, surely we owe them a chance at pursuing restitution – despite what the federal government thinks."[12]

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[9] OIC Press Release, February 15, 2002.

[10] Opinion of the Court, *American Ins. Assn. V. Garamendi*, pages 28-29.

[11] Ibid, page 31.

[12] OIC press release, June 23, 2003.

Recently, however, the Supreme Court refused to dismiss three other Holocaust-related cases:

- *Republic of Austria v. Altmann*: a stolen art recovery case
- *Societe Nationale des Chemins de Fer Francais v. Abrams*: a suit against "the French national railroad for transporting more than 70,000 Jews and others to Nazi concentration Camps during World War II" and "billing per person per kilometer."
- *Poland v. Garb*: a case against Poland for taking the property "after World War II from Jewish families who had fled the country."

In each of these cases the defendant is a national government as opposed to private foreign companies as was the case in the Holocaust insurance case. The foreign policy implications standard used by the court in *American Insurance Association v. Garamendi* would therefore seem to be much greater in the three cases cited above than in the decision in the California Holocaust insurance case where, again, the issue was a state trying to get its licensed American companies to provide information held by their foreign affiliates, that is, foreign companies. Recognizing that the facts in each case are very different, E. Randol Schoenberg, the lead attorney in the Austrian art case, was asked about this apparent disparity in the Supreme Court's thinking. Schoenberg replied that "the only distinction is that there is no 'statement of interest' [by the U.S. Government] yet in our case. The point at the end of the opinion is that they will give some unspecified amount of deference to the views of the executive [branch, i.e., the President] on whether something will interfere. That was what was fatal in Garamendi and what so far distinguishes Altmann."[13]

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In any case, there have been several implications to the Supreme Court ruling where the "playing field" has shifted to the Federal level:

Archival Research

In September 2003, OIC staff met with Prof. Henry Schaerf, a former actuary for several Polish insurance companies, who now resides in Seattle. Professor Schaerf had seen an article in the local press about the resolution of one of Washington State's Holocaust insurance claims, and contacted OIC with information based on his experiences. He related that, while living in Switzerland at the end of the World War II, he had ordered the Polish policy files for the Generali and RAS insurance companies returned to Poland to the Ministry of Finance in Warsaw. They were returned; apparently no copies were made. Professor Schaerf suggested that archival research be conducted to locate those insurance records.

This information was brought to the attention of ICHEIC when Commissioner Kreidler wrote to ICHEIC Chairman Eagleburger requesting that ICHEIC or its constituent parts approach the Polish Government to request that such documents be located and released to ICHEIC. Since the source of the information lives in Washington State, Commissioner Kreidler also offered to

[13] Email from E. Randol Schoenberg, June 6, 2004.

approach Washington's Congressional delegation to request the Administration's and/or the State Department's assistance in obtaining those potentially very important insurance files.[14]

On September 16, 2003, in testimony before the House Committee on Government Reform, Chairman Eagleburger asked Congress for help with the Administration and State Department in intervening with foreign governments – for example, Hungary and Rumania – to gain access to potentially useful archival materials. In his testimony he singled out Poland, citing new information about the Polish policy files.[15]

The following month, in October, 2003, the head of ICHEIC's London Office went to Warsaw and reportedly met with Polish government officials regarding the Polish policies. ICHEIC also obtained the support of the U.S. State Department in its discussions with the Polish Government.

In June, ICHEIC posted on its website a "new" April 2004 report entitled "Final Report on External Research" conducted on behalf of ICHEIC. According to Yoram Mayorek, who conducted the research, he unfortunately was unable to find any information on insurance policies that would assist efforts on behalf of claimants. However, that "final" report was actually about research conducted in 2002-2003. Since then Mr. Mayorek has conducted additional research in Poland (as well as Hungary, Israel, and Romania), the results of which, "Addendum to the FINAL REPORT ON EXTERNAL RESEARCH" dated June 2004, were posted on the ICHEIC website on August 16. Once again "records in Poland…contribute[d] little material relevant for ICHEIC's purposes."[16]

Austrian Agreement

In late 2003, ICHEIC negotiated with the Austrian General Settlement Fund the details of how Austrian claims to ICHEIC would be handled. At the same time potential claimants faced an already-extended November 28, 2003 deadline for filing claims – including claims relating to insurance policies – with the Austrian Fund.

At the October 29, 2003 Annual Meeting of ICHEIC it was reported that a significant number of Holocaust-era insurance policyholder names for policies issued in Austria – as many as 75,000 account details representing some 60,000 families – had been identified.[17] Because of the "urgency of the pending deadline and what is at stake," on November 6, 2003 New York State Insurance Superintendent Greg Serio, on behalf of the NAIC International Holocaust Commission Taskforce, wrote to U.S. Secretary of State Colin Powell urging the Administration to "immediately approach the Austrian government to extend the deadline [for filing a claim with

[14] Letter from Insurance Commissioner Kreidler to ICHEIC Chairman Eagleburger, September 5, 2003.

[15] Statement of ICHEIC Chairman Lawrence Eagleburger in his testimony before the U.S. House of Representatives Committee on Government Reform, September 16, 2003 (hereafter "Eagleburger Congressional Testimony"), page 27.

[16] ICHEIC email, June 28, 2004.

[17] Because of "extensive duplication" the number was later revised down to 30,000, still a significant number.

the Austrian General Settlement Fund] for a minimum of three months beyond the release and publication of these additional names."

> If maintained, the present extended deadline of November 28, 2003 will pass before the release and publication of these new names. It is therefore crucial that the deadline be further extended to afford Austrian survivors and heirs of Holocaust victims the same access to information and opportunity to file new claims as previous claimants.[18]

On November 25, 2003, Chairman Tom Davis and Ranking Member Henry Waxman of the House Committee on Government Reform, in a similar letter to Secretary Powell, wrote that "Austrian Holocaust Survivors and their heirs could be shut out from filing legitimate claims," and urged the Administration to request that the Austrian government extend the then-pending deadline so that "additional names could be released and reviewed by Holocaust survivors."[19]

In response, Superintendent Serio received letters from Secretary of State Powell and Ambassador Edward O'Donnell, Special Envoy for Holocaust Issues, informing him that the matter had been raised with the Austrian Government which had indicated that formally extending the deadline would require passage of a new Austrian law. However,

> …Austria is committed to finding a reasonable way to address any new claims based on information from the new list. We believe that it will be possible to reach an acceptable arrangement with Austria in this matter. This is an ongoing process, and we will continue to work closely with the Austrian government and with [ICHEIC] to ensure that Holocaust survivors and their heirs who have legitimate claims obtain the measure of justice they deserve.[20]

Ambassador O'Donnell added that "the Austrians have assured me…that they will approach these issues with flexibility… The passing of the November 28 deadline does not mean ICHEIC will be unable to reach an acceptable arrangement with Austria on the names and the deadline in the days and weeks thereafter."[21]

To ensure that Austrian claims would be processed under ICHEIC "rules of procedure, including those relating to valuation, to the standards of proof and the corresponding decisions of the Chairman of ICHEIC,"[22] the agreement between ICHEIC and the General Settlement Fund of the

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[18] Letter from Insurance Superintendent Greg Serio to Secretary of State Colin Powell, November 6, 2003.

[19] Letter from House Committee on Government Reform Chairman Tom Davis and Ranking Member Henry Waxman to Secretary of State Colin Powell, November 25, 2003.

[20] Letter from Secretary of State Colin Powell to Superintendent Serio, December 8, 2003.

[21] Letter from Ambassador O'Donnell to Superintendent Serio, December 9, 2003. Representatives Davis and Waxman received a similar letter from Paul Kelly, Assistant Secretary for Legislative Affairs, United States Department of State, dated December 2, 2003.

[22] "Agreement Between the International Commission on Holocaust Era Insurance Claims and the General Settlement Fund of the Republic of Austria," paragraph 2) (b).

Republic of Austria, without a deadline extension, was signed on December 8, 2003. ICHEIC would "continue to use information it receive[d] from Austria and other archives for valuable research matching purposes, to identify supporting material for claims already filed."[23]

ICHEIC staff was recently questioned during an NAIC Holocaust Taskforce conference call of U.S. regulators about the status of claims against Austrian companies and/or policies purchased in Austria in light of the Austrian art case before the United States Supreme Court (see above). ICHEIC staff suggested that relevant claimants should address their concerns to the U.S. State Department, citing a bilateral U.S.-Austrian agreement regarding the handling of property claims, etc., including insurance, against Austria. However, the agreement between ICHEIC and the Austrian government makes no mention of the U.S.-Austrian agreement. While its authority may in fact be somewhat limited, ICHEIC continues to have an obligation to represent the interests of those claimants and to monitor their claims to ensure that they are processed as agreed to under the ICHEIC-Austrian agreement.

* * *

On September 27, 2004 a Washington State claimant shared with OIC a letter from ICHEIC dated September 7, 2004 regarding "recent developments" relating to his claims against Austrian companies. According to the ICHEIC letter:

- As noted above, Austrian claims will be handled according to "ICHEIC claims handling procedures, including those pertaining to valuation, standards of proof and relevant decisions by the Chairman," etc., and that "once a valid claim is established the Claims Committee's decision will be based on the value that the policy would have had if the Holocaust had not occurred and it will be increased to a current value in today's terms following the valuation criteria established by ICHEIC." [24]

- On the other hand meritorious claims will not be paid immediately, "because, in the nature of the settlement, all claims have to be assessed against the total available before payment can be made" meaning, presumably, that because the fund for paying insurance is capped at $25 million claims may in fact <u>not</u> receive their full current value.[25]

Claimants with questions are urged to contact the General Settlement Fund.

OIC has asked ICHEIC to clarify this apparent contradiction.

[23] Minutes of ICHEIC Annual Meeting, October 29, 2003.

[24] ICHEIC letter, September 7, 2004

[25] Ibid. Ongoing litigation in U.S. courts will also likely slow down the payment of claims.

Lawsuit Against ICHEIC

On September 25, 2003, a complaint against ICHEIC was filed in California State Court on behalf of three Holocaust survivors accusing ICHEIC of "unlawfully processing World War II-era insurance claims in order to reduce the exposure of [Generali] from $1 billion to $100 million,"[26] a 90% reduction of the company's estimated exposure for unpaid Holocaust-era life insurance policies.

According to the lawsuit which sought injunctive relief, ICHEIC "seeks to make itself the only remedy available to survivor claims, as part of its plan and scheme to bypass the entire U.S. judicial system in an effort to limit Generali's exposure to survivor claimants by attempting to make the ICHEIC process the exclusive remedy for survivor claims."[27] In response to the filing of the lawsuit against ICHEIC, California Insurance Commissioner John Garamendi commented that "if this lawsuit helps insure that this money is returned more quickly to its rightful owners, in a fair and equitable manner, I welcome the effort as a step in the right direction. As I have said before, the survivors and their heirs are aging. In this case justice delayed is no justice at all."[28]

In addition, Commissioner Garamendi called on ICHEIC Chairman Eagleburger to resign. "I have lost confidence in Mr. Eagleburger, and I think it is time for him to go…I am very disappointed and very concerned about the lack of progress the ICHEIC has achieved. It seems they are more often interested in protecting the companies than in providing quick and appropriate payments to survivors."[29] Commissioner Garamendi's call for Eagleburger's resignation was joined by twenty-five members of the California Assembly and a member of Congress from New York State.

ICHEIC responded that Chairman Eagleburger "has no intention of resigning."[30]

In February, 2004 a motion by ICHEIC to dismiss the lawsuit filed in U.S. District Court was denied, allowing the lawsuit to proceed and in May, 2004 ICHEIC filed a "Motion to Quash Service for Lack of Personal Jurisdiction" in California Superior Court. The basis for ICHEIC's motion was that

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[26] Los Angeles Daily Journal, February 24, 2004

[27] Case No. BC 303004: "Complaint for Injunctive Relief for Unfair Business Practices in Violation of Business and Professions Code § 17200," page 7, paragraph (e). The complaint cites the earlier decision of U.S. District Court Judge Michael Mukasey in refusing to dismiss a lawsuit against Generali – *In re: Assicurazioni Generali S.p.A. Holocaust Insurance Litigation* – that ICHEIC "is biased in favor of Generali because its funding comes, in good measure, from Generali, making it and its process 'in a sense the company store.'"

[28] California Insurance Department press release, September 25, 2003.

[29] "Garamendi Wants Chairman of Holocaust Panel to Resign," Los Angeles Times, story by Henry Weinstein, September 26, 2003.

[30] Ibid.

> ICHEIC does not do business in California, nor has it purposefully availed itself of the laws of California, and there are insufficient contacts with California to support personal jurisdiction [of the] Court over ICHEIC under the Constitutions of either the United States or the State of California. In the alternative, ICHEIC is demurring to plaintiff's complaint on the grounds that (1) plaintiff's claims are preempted because they conflict with the United States foreign policy and (2) the Court should abstain from exercising jurisdiction over the claims because of their inherently federal and political nature."[31]

In late August 2004 California Superior Court Judge William F. Highberger dismissed the lawsuit ruling that "ICHEIC isn't subject to the jurisdiction of the California court system," and that the claims presented in the lawsuit are "a foreign policy question and therefore are properly handled by the executive branch of the federal government."[32]

William Shernoff, attorney in the case against ICHEIC, said he planned to appeal, and that he hoped to turn the case into a class action against ICHEIC with as many as 3,000 plaintiffs.[33]

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Continuing Dispute with California

On June 11, 2004 California Insurance Commissioner John Garamendi again wrote to ICHEIC Chairman Eagleburger to express his continuing concern regarding the slow rate of claims processing by the companies. According to Commissioner Garamendi, "based on ICHEIC's own statistics, if the insurers do not speed up their claims processing, claims will not be completed until 2011. With an operations budget set to last through the end of 2004, this is certainly a problem."[34] In addition, "although ICHEIC faces serious problems, it continues to ignore those of its commissioners who dare to suggest improvements, make constructive criticism, ask incisive questions or call for better management."[35]

Commissioner Garamendi went on to write that:

> ICHEIC management is sloppy. The current claims verification system is woefully inadequate. The claims database still needs work. ICHEIC's refusal to update the valuation guidelines is amateurish. And too many of ICHEIC's interpretations of the

[31] Case No.: BC303004, "Notice of Motion and Motion to Quash Service for Lack of Personal Jurisdiction," page 1.

[32] "Judge Dismisses $1B Suit Against Claims Agency," by Chris Grier, AMBest Best Wire Services, September 27, 2004.

[33] Ibid.

[34] Letter from California Insurance Commissioner John Garamendi to ICHEIC Chairman Lawrence Eagleburger, June 8, 2004. A more recent estimate, based on the rate of claims processing since June, 2004, puts the completion date for named claims as late 2007.

[35] Ibid.

> rules favor the insurers. Reports that upwards of 100 claims from Washington and Maryland have been misplaced are alarming….
>
> There are some possible solutions that have been proposed to you, which you have rejected…The sad thing is that while some of ICHEIC's problems would be very difficult to resolve…the management and governance problems are not so difficult….Making decisions with input from your members rather than making decisions and then notifying your Commissioners would be great.[36]

The letter concluded with "I must tell you I am beginning to have serious doubts as to whether ICHEIC is the best way to serve these claimants."[37]

* * *

On June 11, ICHEIC Chairman Eagleburger responded with a seven page letter of his own. He began by assuring Commissioner Garamendi that ICHEIC "will remain in existence until we have fulfilled this mission [to 'identify, settle and pay claims on previously uncompensated individual Holocaust era insurance policies at no cost to claimants'] for all claims that were submitted to us prior to March 31, 2004."[38]

This exchange offers two very different perspectives regarding the status and criteria for judging ICHEIC's success. One example: in his response to Commissioner Garamendi's charge that "ICHEIC's refusal to update the valuation guidelines is amateurish," Chairman Eagleburger wrote:

> The Valuation Guidelines for claims on German companies were finalized on October 16, 2002, when the Trilateral Agreement [ICHEIC, the German Foundation and the GDV] was signed. The ICHEIC Valuation Guidelines for all ICHEIC claims not covered under the Trilateral Agreement were finalized on October 22, 2002. These are, in effect, contractual obligations. As such they cannot unilaterally be set aside.
>
> Your recommendation that the Valuation Committee be reconvened for the purpose of changing the Valuation Guidelines makes no sense unless you believe that ICHEIC has no obligation to keep its word. That may be the way you do business in California but it would be my definition of truly amateurish.
>
> Negotiations are over; implementation of the Guidelines and ensuring that the companies follow them so that we can finish processing claims as quickly and accurately as possible is what now must concern us. With this in mind and at the request of Jewish organizations and U.S. insurance regulators, we instituted an Operations Committee to

[36] Ibid.

[37] Ibid.

[38] Letter from ICHEIC Chairman Eagleburger to California Insurance Commissioner Garamendi, June 11, 2004, page 1.

handle questions related to the implementation of existing ICHEIC decisions and to overall claims processing.[39]

As will be discussed at greater length below (Section VI, Issue #4), ICHEIC's Valuation Guidelines leave room for different interpretations, and the ICHEIC Agreement with the German Foundation and the GDV ("Trilateral Agreement") in fact does take into account the possibility that those guidelines might need to be adjusted as new situations arise. The ICHEIC agreement cited by Chairman Eagleburger states: "The parties shall endeavor in good faith to resolve any dispute in relation to the interpretation or application of this Agreement amicably by negotiations between the parties."[40] As one observer has pointed out, "those words were purposely inserted into the Agreement in order to finalize it, being cognizant that all issues had not been resolved and others could arise in interpreting the Agreement. Further[more], there is no accord prohibiting ICHEIC from resolving original or unforeseen issues with the non-German companies."[41]

* * *

Generali Trust Fund

ICHEIC is now scheduled to complete the processing of all claims by the end of 2005, with all appeals to be concluded sometime in early 2006.[42] One factor driving the desire to meet the December 2005/early 2006 "closedown" goals is the cost of keeping ICHEIC going. However, it has been estimated that at the present rate the processing of all claims will not be completed until sometime in early 2007.[43] The main concern has been the large number of outstanding claims naming Generali.

In early August, ICHEIC Chairman Eagleburger met with officials of Generali and the Jerusalem-based Generali Trust Fund (GTF), which has been processing all of Generali's claims, to discuss ways of expediting the processing of Generali claims. These proposals included transferring all unnamed claims from GTF to Generali, with all matched claims then sent back to GTF for further processing, and increasing GTF staff assigned to handling the named Generali claims.[44]

On September 10 Chairman Eagleburger again met with GTF leadership, who reported that the GTF Board had rejected "key components" of the proposed agreement with Generali/GTF,

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[39] Ibid, page 4.

[40] ICHEIC Agreement with the Foundation "Remembrance, Responsibility and Future" and the German Insurance Association, Section 11, paragraph (3).

[41] Sidney Zabludoff memo, "Eagleburger's June 11 response to Garamendi's letter of June 8," June 15, 2004.

[42] NAIC Holocaust Taskforce conference call, October 6, 2004.

[43] ICHEIC Claims Processing Timeline, PowerPoint presentation, April 24, 2004.

[44] Memo from ICHEIC Chairman Eagleburger to ICHEIC Commissioners, Alternates and Observers, August 4, 2004.

including refusing "to consult with ICHEIC on key management decisions related to carrying out the GTF's obligations for processing named claims," and

> More specifically…refuses to acknowledge the GTF is a contractor to ICHEIC for the processing of ICHEIC claims and, therefore, has not agreed to allow ICHEIC to exercise the oversight that is necessary, under the circumstances, with respect to hiring appropriate new staff and otherwise reorganizing the work of the claims team to improve quality and efficiency of claims processing.[45]

In a September 10, 2004 memo to ICHEIC Commissioners, Alternates and Observers about the meeting, Chairman Eagleburger concluded that he had made clear that "if the GTF's performance did not improve substantially, I would be raising with ICHEIC Commissioners the wisdom of continuing with the current contractual relationship."[46]

On September 22, California Insurance Commissioner Garamendi wrote to Chairman Eagleburger that, "in our opinion, the Generali Trust Fund has been a source of trouble to ICHEIC since it first started processing Generali claims back in the fall of 2001."

> Not only has the GTF failed to significantly improve the speed and consistency of claims handling, but it has reneged on the agreement you made in Rome earlier this month, refuses to see itself as ICHEIC's contractor, and refuses to allow ICHEIC oversight of its claims handling.
>
> The GTF is Generali's agent, and ICHEIC contractor. The GTF must follow ICHEIC's rules and procedures, must make proper and timely reporting to ICHEIC, and must allow ICHEIC oversight.
>
> ICHEIC has given the GTF more than enough time to reform.[47]

The letter concluded, "We urge you to terminate all contracts with the GTF immediately…[48]

A similar recommendation was included in a joint letter sent to Chairman Eagleburger by Insurance Superintendent Serio of New York, Chair of both the NAIC Task Force on Holocaust Issues and of ICHEIC's Operations Committee, and Commissioner Koken (PA), Chair of ICHEIC's Financial/Administrative Advisory Committee on October 6;[49] and in a separate letter

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[45] Memorandum from ICHEIC Chairman Eagleburger to ICHEIC Commissioners, Alternates and Observers, September 10, 2004.

[46] Ibid

[47] Letter from California Insurance Commissioner John Garamendi to ICHEIC Chairman Eagleburger, September 22, 2004.

[48] Ibid.

[49] According to the joint letter, "Commissioner Gallagher [FL], as a member of ICHEIC's Operations Committee joins us in the views expressed here."

by Insurance Commissioner Molasky-Arman of Nevada, sent to Chairman Eagleburger on October 8.

On November 1, 2004 Chairman Eagleburger announced his decision to terminate ICHEIC's implementing organization agreement with Generali Trust Fund, effective November 30, 2004. According to Eagleburger, "this step has been prompted by the quality as well as the pace of work being done by the Generali Trust Fund…"[50] He went on to explain that "I have put in place a work plan to ensure prompt transfer of Generali claims processing work back to the Generali Policy Information Center (PIC) in Trieste, Italy…I believe that we have a work plan that, if executed appropriately, will result in decisions on all Generali claims by the close of 2005, with appeals continuing into 2006."[51]

[50] "Memorandum to Commissioner, Alternates and Observers, November 1, 2004

[51] Ibid.

IV. PUBLICATION OF NAMES – AN UPDATE

Under the terms of the "Memorandum of Understanding" (MOU) establishing ICHEIC, participating companies agreed to publish the names of their Holocaust-era policyholders in order to alert Holocaust survivors and their heirs that they may have unpaid insurance claims due them.[52] As of September 2003, or more than three years into ICHEIC's claims matching process, only 52,175 of the 519,009 names posted on the ICHEIC web site have come from the companies,[53] and of those, 45,152 came from one company (Generali). The remaining names are the result of government sources and independent archival research, one of ICHEIC's significant accomplishments.

* * *

As part of the agreement between ICHEIC, the German Foundation "Remembrance, Responsibility and Future" and the German Insurance Association (GDV) signed in October 2002, "the German Insurance Association (GDV), on behalf of the participating German insurance companies, the Foundation and ICHEIC agree[d] to work together with a view to publishing as comprehensive a list as possible of holders of insurance policies issued by German companies who may have been Holocaust victims."[54] Company policyholder names (estimated between eight and ten million) would then be matched against a newly compiled comprehensive list of pre-war German Jewry. According to the agreement, "the lists, as published on the ICHEIC website, [were] to be used to assist potential claimants**…All actual claims will be researched by the companies using all of their records**, whether or not the names are in an electronic format."[55]

In April 2003, ICHEIC published the names of more than 363,232 German policyholders.

* * *

The deadline for filing claims was December 31, 2003. Despite the terms of the MOU, up until the very end of the claims-filing period the companies continued to resist releasing and having the names of their policyholders published, in some cases citing European data protection laws. By failing and/or refusing to provide potential claimants with the information they often needed to file initial claims, the companies succeeded in limiting the number of claims and their resultant potential liability. Had the companies released the number of policyholder names that *could and should* have been published over the entire ICHEIC claims filing period, it is likely the number of claims would have been significantly higher than the present 79,732.

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[52] "As part of the audit mandate, the IC [ICHEIC] will address the issues of a full accounting by the insurance companies and **publication of names of Holocaust victims who held unpaid insurance policies,**" [emphasis added]. Memorandum of Understanding, August 1998.

[53] Eagleburger Congressional Testimony, page 28. In his testimony Chairman Eagleburger characterized these numbers as an indication that ICHEIC has been "largely successful in acquiring lists of policyholders from participating insurance companies…" (Ibid. page 4).

[54] Agreement by the German Insurance Association, ICHEIC, and the Foundation, Annex H, page 78.

[55] Agreement by the German Insurance Association, ICHEIC, and the Foundation, Annex H, Section VII page 82.

SOURCES OF POLICYHOLDER NAMES ON ICHEIC'S WEBSITE [56]

(The numbers in parentheses represent the increase since the OIC's June 2002 status report.)

Germany (German Insurance Association, [GDV]) 363,232

Allianz/RAS 5,691 (5,355)
AXA 191 (no change)
Generali 45,152 (36,412)
Winterthur 73 (69)
Zurich 1,068 (1,048)

***Total from MOU Companies* 52,175**

Belgium (Buysse Commission) 217
Czech Republic (Ministry of Finance) 207
Israel (Ministry of Finance) 250
Netherlands (Association of Insurers in the Netherlands) 759

***Total from Governmental Sources* 1,433**

Austria State Archives - Vienna (Research conducted by Helen Junz) 14,921
Asset Declarations & Tax Forms (Research conducted by Facts & Files) 77,517
Confiscated Italian Policies (Research conducted by Facts & Files) 236
Reich Oversight Offices (Research conducted by Risk International) 5,181

***Total from Archival Research* 97,855**

Non-ICHEIC Companies 4,314

TOTAL 519,009

[56] Eagleburger Congressional Testimony, page 28.

V. WASHINGTON STATE CLAIMS - A MICROCOSM

Through an arrangement with ICHEIC, each month OIC receives and reviews reports on the status and progress of claims from Washington State submitted to ICHEIC by OIC to make certain none of Washington's claims was being held up by a claimant's failure to submit a required document, etc. In addition, where possible, attempts are made to follow up with the relevant company directly to determine why a particular claim was denied or to clarify any discrepancies.

According to the latest available monthly report dated September 20, 2004, 760 claims from Washington State were filed with ICHEIC,[57] of which 235 (30.9%) were able to name a company, somewhat higher than the overall global average of 27.7%.

Under the claims-handling procedures of the ICHEIC, companies that receive an inquiry regarding a claim are required to respond within 90 days."[58] On November 30, 2001, Washington State Insurance Commissioner Kreidler wrote to ICHEIC requesting an explanation as to why the claims-handling procedures of ICHEIC with regard to the 90-day response time were not being upheld.[59]

In its response, ICHEIC attributed the delay to several factors:

- the large volume of claims received by the ICHEIC;
- **the fact that "80% of all claims – a much higher figure than anyone expected at the outset - do not name a specific company, contain very little evidence and on average, have to be investigated by three ICHEIC member companies;"**
- the difficulty the companies are having dealing with the large volume of claims; and
- the length of time needed to "agree on how audits of companies should be conducted."[60]

The second explanation – that 80% of claimants were unable to provide the name of a specific company – created a strong impression with claimants that there was a positive benefit to being able to name a company and that named claims could and would be handled more expeditiously. Clearly that appears not to have been the case. Other problems affecting named claims will be dealt with later in this report (see Section VI, Issue #7). In any case, most of Washington State's

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[57] An additional 168 claims were apparently filed directly with ICHEIC, which because of "privacy concerns" have not been shared with OIC. The breakdown on the chart below is based on all claims submitted to ICHEIC through the Holocaust Survivors Assistance Office.

[58] "The company will write to you with their findings **within 90 days of their receiving your claim from us**. If the company has not resolved your claim in that time, they will provide you with a status report on their investigation." "How We Handle Your Claim," paragraph 4.

[59] Letter from Washington State Insurance Commissioner Mike Kreidler to ICHEIC Chairman Lawrence Eagleburger, November 30, 2001.

[60] Letter from former ICHEIC Vice Chairman Geoffrey Fitchew to Insurance Commissioner Kreidler, January 21, 2002. One additional explanation for the processing delay is the length of time it took ICHEIC to enter into agreements with the various insurance associations (see above), regarding how claims were to be processed, etc.

claims continue to have been in the ICHEIC system for well over a year, with little, if any, change of status.

Twenty-three of Washington's claims have received offers (17 from MOU companies and 6 from non-MOU companies),[61] and 184 have been denied; 56 of these denials were on "named claims," i.e., claims which named the company believed to have sold the policy to the claimant/claimant's family. As will be discussed at greater length later in this report (Section VI, Issue #7), there are many possible reasons a "named claim" may have been denied; it therefore is logical to assume that many of the 56 declines were properly declined "for cause," and that many of the remaining "unresolved" claims will be resolved through offers of payment, findings of previous compensation, and so forth. However, to date very few claimants whose claims have been denied have received a detailed explanation as to why their claims were denied, as required by ICHEIC rules (see Section VI, Issue #8).

Sixteen of Washington State's 195 claimants have received offers of payment totaling $260,046. An additional 52 claimants have received $1,000 humanitarian fund payments, for a total of $312,046 paid to Washington claimants.[62]

The largest single category of Washington claims is "Claim Sent to MOU [i.e., the participating companies] – awaiting response" (360 claims). An additional 13 claims with non-MOU companies are under query or on hold awaiting ICHEIC's processing decisions. One hundred fifty-seven claims fall under the category of "Other:" "Unnamed company – Declined" (133), "Claim form incomplete" (9), etc.

Finally, 106 claims are listed as "Finalized - invalid claim" for a variety of reasons: "Replica Claim" (90), "Previously Compensated" (3), and "FSU [former Soviet Union] – Unknown Insurance Company" (10), etc.

[61] Actually the monthly report shows 44 offers, but some of these are "amalgamated" claims, etc. See below.

[62] According to ICHEIC, an additional seven offers totaling $85,254 and eleven additional Humanitarian payments totaling $11,000 have been made on claims filed directly with ICHEIC.

STATUS OF WASHINGTON STATE CLAIMS SUBMITTED TO ICHEIC (as of 10-20-04)

TOTAL CLAIMS	760*
Claims naming a company	242
Claims naming an MOU (original participating) company	106
Claims naming a non-MOU company	136
Claims not naming a company	518
Total Offers	23
Total Declines	189
Present Status of MOU Company Claims:	
Offers by MOU Companies	17
Declined by MOU companies	43
Claim sent to MOU awaiting response	21
Other	25
Present Status of Non-MOU Named Claims	
Offers by non-MOU	6
Declined by non-MOU company	13
MOU confirmed ownership, awaiting response	5
"Claim under query or on hold - Non-MOU Awaiting Commission"	12
"Claim sent to MOU awaiting response"	76
"Sent to Non-MOU Co. awaiting response"	13
Other	11
Sent to MOU awaiting response	360
Other (157)	
Unnamed Company - Declined	133
Claim form incomplete	9
Claim under query or on hold – Policy issued outside ICHEIC sphere (i.e., geography covered by ICHEIC)	2
Non Life claim on Unnamed Company	9
"Referred to ICHEIC"	4
Finalized – Invalid Claim" (106):	
"Invalid – does not meet ICHEIC…"	3
Policies from the FSU (former Soviet Union) – Unknown Insurance Company	10
Previously Compensated	3
Replica Claims	90

Source: International Commission on Holocaust Era Insurance Claims (ICHEIC)

* An additional 168 claims were apparently filed directly with ICHEIC, which because of "privacy concerns" have not been shared with OIC. The breakdown in this chart is based on **all** claims submitted to ICHEIC through the Holocaust Survivors Assistance Office.

VI. ICHEIC PROCESSING & POLICY ISSUES

ICHEIC Chairman Eagleburger, among others, has correctly pointed out that ICHEIC was created from "scratch" in an environment of probably impossibly high expectations.[63] However, recognizing that there will always be problems in any process as complicated as ICHEIC (attempting to resolve so many insurance claims from so many different companies and countries so many years after the fact), one measure of ICHEIC's success *could and should* have been a willingness to adapt and respond to changing conditions, new developments, and unforeseen complications as the ICHEIC process evolved.

Yet, even at this very late date, ICHEIC continues to struggle with significant processing problems, some attributable to the inability of ICHEIC's infrastructure to adapt to new developments. Contributing to this circumstance is what could be viewed as hesitancy on the part of ICHEIC leadership to accept good faith suggestions and constructive criticism, to the detriment of the claims resolution process and those that process was established to serve.

The following are case study experiences of Washington claimants that highlight several issues we believe ICHEIC has not satisfactorily addressed:

[63] See, for example, the comments of ICHEIC Chief Operating Officer Mara Rudman, "In Broadside, Official says ICHEIC is Bungling Shoah Insurance Claims," Jewish Telegraphic Agency (JTA), June 15, 2004; discussed below.

Issue #1: "Missing" Claims and "Missing" Names - "Amalgamation" of Claims

Prior to the December 31, 2003 deadline for filing claims with ICHEIC, and in the months following, OIC attempted to reconcile Washington State's list of claimants and their claims with the list of Washington claimants and claims registered by ICHEIC. The discrepancy between the two lists rose to102 claims, or about 20% of all claims submitted to ICHEIC through OIC. For several months OIC worked with ICHEIC staff to rectify that discrepancy.

After repeated exchanges, on May 18 and May 20, 2004 OIC received requests from ICHEIC to re-submit two batches of claims totaling some 59 claims (more than 10% of Washington's claims). The other 43 claims had been registered; many of the 43 claims had apparently not been correctly entered as Washington claims. At first, OIC assumed the 59 missing claims were simply the result of a lost mailing, but later determined the missing claims in fact were from several different mailings over several months.

At about the same time (May 19, 2004) OIC learned the Maryland Insurance Department had requested information about 90 of their claims and that ICHEIC had no record of 56 of those claims. Recently Nevada also reported "missing" claims.

Have only claims from Washington State, Maryland, and Nevada somehow been lost? Or were *other* claims also lost? And if so, how many?

One way of checking whether, in fact, this was/remains a significant problem would be for each state to submit a list of its claimants to reconcile the two sets of claims – the states' and ICHEIC's. But since only a few states have designated staff on the Holocaust insurance issue; this option would likely produce only limited results.[64] Furthermore, that solution would not resolve the possibility of lost claims outside the U.S.

The question of missing claims was discussed during a NAIC Holocaust Taskforce conference call on June 2, 2004. In addition, OIC made several inquiries of ICHEIC as to what it was doing to determine how widespread the problem of missing claims might be, something which may be impossible to determine. ICHEIC's response was to caution against causing a "panic" over the *possibility* of lost claims.[65]

OIC remains concerned about the possibility of missing or lost claims and the implications this issue raises regarding oversight of the ICHEIC process, as well as the process itself.

* * *

[64] Prior to the formal establishment of ICHEIC, several states in the U.S. used the New York State Holocaust Claims Processing Office (HCPO) as a clearinghouse for their claims which were then forwarded to ICHEIC. Washington State did not. On several occasions when OIC attempted to obtain information about Washington State residents who filed claims through New York or directly with ICHEIC we were refused that information for reasons of "confidentiality" or 'privacy," making tracking the status of those 168 claims more difficult. Other states have reportedly experienced the same thing.

[65] NAIC Holocaust Taskforce conference call, June 2, 2004.

In addition to "missing" claims, a related problem is the "amalgamation" or combining of claims with overlapping information from the same claimant, which increases the possibility of "dropped" names and/or inaccurately entered names.

Background: Originally, each claim filed with ICHEIC was entered into the system and treated separately. Apparently for budgetary and efficiency reasons, this practice changed along the way and information from several claims was combined into one claim; i.e., "amalgamation." This has caused a great deal of confusion due to 1) claims not being processed separately from the time they entered into the ICHEIC system until their final resolution; and 2) at times "mixing and matching" different categories of people named on claim forms as policyholders, insureds and beneficiaries *from different claims* as if the relationships – for example, policyholder to insured or insured to beneficiary – did not matter, especially when the family may have had policies with more than once company. As a result, there is a very real possibility of names becoming lost in the system, or offers being listed incorrectly in connection with the wrong family member. These concerns have been raised with ICHEIC since the early days of the claims processing system. Each time OIC has been told "not to worry," but so far no action has been taken, and resolving the issue has been become much more complex, time consuming and costly.

- ***Example 1:*** *For several decades following the end of World War II E.L. pursued claims for life insurance policies purchased in their native Germany by her parents and in-laws, who were killed during the Holocaust, only to be told by the company involved - Allianz Lebensversicherungs AG - that no records of her family's insurance existed. In the fall of 2000 after the establishment of ICHEIC E.L. filed claims for 10 members of her family. On April 13, 2003 E.L. received a letter from Allianz informing her that the company had finally located records about her family's insurance and offers of payment totaling about $12,000 for three policies taken out by her mother, father, and father-in-law.*

  E. L. passed away on March 2, 2003.

E.L.'s family has now received four offers of payment; two have been accepted and two are being appealed. However, according to the most recent monthly status report OIC receives from ICHEIC (August 2004), the family has received *five* offers, including two for claims listing relatives for which Allianz has indicated it could find no record of a policy.

While offers have been made on four (five?) of the family's claims, and while we know which of the three names on the offer line of the ICHEIC report – "policyholder," "insured," and "beneficiary" - the offers were actually made on, we cannot determine the status of the claims for the *other* relatives named in separate claims and also listed on the ICHEIC report on the offers lines. When multiple claims get "bundled" together this way it is difficult to determine which name/claim an offer is actually for, and more importantly, what the status of the research on the *other* names listed on the offer line of the report is; i.e., the actual offer is on only of the three names/claims on each line of the ICHEIC report. What became of the other claims? Are they still open? Have they been denied?

- ***Example 2****: In February, 2000, K.B. filed claims naming ten members of her family. The ICHEIC monthly report lists nine names; one other name is "missing." Yet the offer and*

payment K.B. received from Allianz was for the missing relative, an uncle. (She has also received a letter from Allianz indicating that it could find no record of a policy for two other uncles.) Finally, the ICHEIC monthly report lists four offers, and no denials. The denials are likely not listed because they are not final, but the other facts, especially the number of offers, seem rather confused.

ICHEIC acknowledges that the uncle's name "does not appear in the ICHEIC claims database; this seems to be an error of omission…Apologies for this error in the processing of [K.B.]'s claim, which, although it did not prevent the provision of an offer, is nonetheless regrettable."[66]

- ***Example 3****: D.C. received and accepted an offer of payment on one claim. However, the August, 2004 monthly report continues to list four offers, which has the effect of inflating ICHEIC statistics. In addition, while again we know which of three names on the offer line of the ICHEIC report - policyholder, insured, and beneficiary - the actual offer was made on, we cannot determine the status of the claims for the other two names listed on the offer line. Finally, and much more importantly, there is no mention at all on the monthly report of one additional relative for whom a claim was filed.*

In February, ICHEIC indicated it had "begun looking into the issue of data entry…much of this relates to amalgamation and how claims…are entered into the database/searched."[67] ICHEIC was "attempting to put together a paper on amalgamation…to describe past/present/future practices and how this operational instruction affects the reports that you see and/or how it could affect company matching. In short, I promise to keep you posted on what we find."[68]

On July 16, 2004, OIC asked for an update. In response, on July 22, 2004 OIC received a detailed explanation indicating that:

- ALL names submitted by a particular claimant on any one or more claims are investigated as policyholders (or better stated, are run against all names that might be included in a company's archives or in the ICHEIC research database).

  For example, if a claimant has three unnamed claims on policies likely purchased in Hungary, from an administrative perspective, submitting claims 1, 2 & 3 with three separate names each, is the same as submitting claim 1 with nine names. In each case, the names are submitted to all relevant MOU companies and the name of each individual is searched against all relevant company records.

  Generally, each claim holds three names (nominally entitled policyholder, insured and beneficiary). As you know, there are secondary keys attached to main claims for electronic/processing amalgamation purposes (and for the continued addition of new names into an electronic process). Each secondary key is attached to the main claim, and

[66] ICHEIC email, September 23, 2004.

[67] ICHEIC email, February 3, 2004.

[68] Ibid.

denoted by the claim number followed by /001, /002 etc. Secondary keys also hold three names.

If a claimant has submitted an unnamed claim with two names already on it, but then discovers another two relatives for whom they would like to submit a claim, these two additional names are included in the claims electronically by entering the additional names into the next two available fields. This means that the two names originally submitted would have been entered into the policyholder and insured fields, so the first new name would be entered into the beneficiary field of the main claim, while the second name would be entered into the policyholder field of a newly created secondary key.

I recognize that this sounds counter-intuitive given that claimants are specific in certain instances as to which individual is associated with which relation to the policy (i.e., policyholder, beneficiary, etc.). This said, however, I think that [the] important point to emphasise is that, in terms of how the companies investigate unnamed claims that have been amalgamated; the names will be investigated equally, regardless of which fields they are entered into….Although…the process, as currently implemented, makes sense from an operations perspective…it can be burdensome for regulators in ensuring to claimants that their information has been accurately recorded in the ICHEIC system and that all information is being checked.

- For unnamed claims, the BAFin [Bundesanstalt für Finanzdienstleistungsaufsicht, the German federal agency for the supervision of financial services] and **ICHEIC independent audits** [emphasis added] of the MOU companies ensure that all names (whether they are the ones originally listed in the claim form, or whether they are added at a later date) are investigated according to ICHEIC procedures. In the case of named claims, the ICHEIC claims teams verification procedures have been implemented in order to ensure that decisions on named claims are thoroughly checked and that there is a company response included in the offer letter on all relevant names included in a particular file.

- With regard to your concern about the non-appearance of certain names on your regulator report, this is often a function of the way in which different information is stored on the ICHEIC database. The regulator reports show the first and last names of the claimant and the individuals whose names have been submitted for processing. However, there are other less frequently used fields for storing similar information - "Maiden name" and "Alias" fields. The "Alias" field in particular is useful for storing different spellings and name changes. As such, although some of the changes that you have flagged have been and will be incorporated into the relevant claimants' files, the way in which they are stored means that they will not necessarily be reflected in your monthly reports. Again, however, all of these names are matched against company records.

- From your emails, I understand that the layout of your report implies that the same offer has been recorded several times. Offer reports automatically update the subsidiary keys on regulator reports so that they display the same status as the main claim. However…offers and declines are not being double counted - this information is drawn

> only from main claims. i.e., the regulator report may display "Offer" in the status column for 31608, 31608/001, 31608/002 and 31608/003, but when ICHEIC counts figures, they are compiled using only the information stored on 31608; hence the information is only being tallied once.[69]

OIC has asked ICHEIC how each of the above examples fit into this explanation and continues to be concerned about the possibility of missing claims and/or inaccurately entered names, and with good reason: the audit process still has not been finalized, will take a "spot check" sampling approach, and may come largely after the fact (see Section VI, Issue #9: Audits and Appeals).

[69] ICHEIC email, July 22, 2004.

Issue #2: Enforcement of ICHEIC Agreements and Rules

***Case Study**: In March, 2003 M.T. filed claims on behalf of four of his relatives. On August 2, 2004 he received a letter from the Jerusalem-based Generali Trust Fund (GTF), which is responsible for processing all claims for Generali and its subsidiaries, requesting information about*

> *1.…all the brothers and sisters [of the insureds] and spouses, their children and spouses, their grandchildren and spouses. Please indicate dates of birth and death of each one, and note the addresses and phone nos. of relevant family members.*
> *2. If you have a death certificate or Wills of your grandfather, grandmother and your parents, please send us a copy of it.*
> *3. Please send us a copy of your Passport or Identity card and of your birth certificate or any other document that shows the relation between you and the insured.*
> *4. If you have siblings alive please send a copy of their Passport and Birth certificate…*
> *5. Please write us an information [sic], the birth dates, the relationship to you and the names of their spouses of…*[70]

*The letter concluded with "please be advised that the above mentioned documents **are a requisite for our further handling of your claim" [emphasis added].***[71]

The issue here is that the information requested by GTF *as a condition* for processing M.T.'s claim(s) is not required by the GTF-ICHEIC agreement. Furthermore, ICHEIC was not copied on the letter to the claimant, making ICHEIC's monitoring and enforcing that agreement much more difficult.

Earlier this year, in response to a communication from GTF stating that "since ICHEIC is not a direct participant in the Generali appeals process, internal documents related to the appeal, such as the appeal statement and the GTF response, <u>are not routinely shared with ICHEIC</u>,"[72] OIC requested an explanation from ICHEIC of how it monitors GTF's activities. To date no response has been received, although it was OIC's understanding that GTF had stopped requiring information not required by the ICHEIC-GTF agreement. In light of the recent letter from GTF raising the very same issues, OIC again asked ICHEIC to explain what information GTF is required to share with ICHEIC regarding its processing of claims and decisions (offers and denials) as well as clarify its own oversight role and understanding of the GTF process.

ICHEIC staff replied that it agreed with OIC "that the phrasing of the [GTF] letter must be changed to avoid creating the impression that such additional information is required and to make it more clear that providing additional information would be beneficial to the processing of the claim in question… If [claimants] are unable to provide such information, they should

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[70] Letter from Generali Trust Fund (GTF) to M.T., July 4, 2004.

[71] Ibid. An added complication here is that several family members have affirmatively asked **<u>not</u>** to be included in pursuing these insurance claims.

[72] Email from GTF to OIC, November 27, 2003.

certainly not suffer any delays in the processing of their claim, as you point out… We will raise with the GTF the phrasing of certain sections of their 4 July 2004 letter that you highlighted…"[73]

Nevertheless, on September 6, 2004 OIC received another letter specifying that the requested information was a "requisite for further handling of [these] claim[s],"[74] which again was brought to the attention of ICHEIC.

Over the years, ICHEIC has often said it would develop standardized language for all the insurers to use. To date no such standard language has been shared with U.S. regulators. On September 23, ICHEIC indicated that "ICHEIC has done and continues to work closely with the insurance companies to ensure that communication with the claimants is as clear as possible. Decision letters [see below] that have been issued by the GTF in recent months do conform to the agreed standard language."[75]

[73] ICHEIC email, August 13, 2004.

[74] GTF letter to OIC, September 6, 2004. On October 28, 2004 the family received offers of payment on six policies.

[75] ICHEIC email, September 23, 2004.

Issue #3: "MOU Confirmed Ownership – Awaiting…"

***Case Study**: Between March, 2001 and July, 2004, the claims of E.L. [and several other claimants] were on hold with the designation "MOU Ownership Confirmed," which would seem to suggest it was simply a matter of having the company which has acknowledged ownership of the policies in question determine what happened to those policies. In April 2004 – three years later - ICHEIC, in response to a request from OIC for clarification in order to advise the claimants about the status of their claims, requested that OIC ask E.L. for some additional information about the date of birth of one of her relatives; E.L. passed away in March, 2003. Efforts to obtain the requested information from other family members failed, but as on observer pointed out, "If the policy information seems to match the name and other information such as the city, relatives, occupation, etc., so what if there is no birth date. [ICHEIC has] lots of matches that are clearly the same person even though they do not have a date of birth."*

The family of E.L. received an offer on this claim in July, 2004.

While there has been considerable improvement of late, getting specific answers from ICHEIC can often take an inordinately long time. Like E.L., older claimants simply do not have the time to wait for answers. In her case, the delay may have been totally unnecessary.

Issue #4: Valuation Guidelines

Case Study**:** *In March 2000, very early in the ICHEIC process, F.M. filed a claim against German insurer Victoria of Berlin on behalf of her father. More than three years later on August 4, 2003 F.M. received an offer letter from Victoria acknowledging the existence of a policy but indicating that there was no information about the date her father's policy began or when it matured.*

Nevertheless, in calculating its offer the company used a policy-duration of twenty years, and presumed that the policy was at least half paid up by the time the loan was taken, producing a policy issue date of 1928.

In OIC's opinion, once Victoria accepted that the policy was at least half paid up by 1938, then logically a purchase date earlier than 1928 must be assumed. Victoria conceded as much in its original offer letter of August 4: "…the insurance policy was valid for more than 50 percent of its agreed maturity at the time when the loan was granted [1938] based on the fact that "about 50 percent of the insured sum could be taken as a loan by 1938," which, again, suggests an earlier starting date than 1928. But if an earlier, more likely start date (for example, 1926) was used, then the value of the policy would increase to 4,403.94 euros [$5,309] instead of Victoria's offer of 3,381.43 euros [$4,076]. Because of questions regarding the application of ICHEIC's valuation guidelines and the valuation methodology used by the company in calculating its offer, the result was a 30% difference between what the company was offering and what, after consulting an expert, OIC believed the offer should be. The company and OIC, after an exchange of letters on the matter, agreed to refer the matter to ICHEIC's Valuation Committee for clarification.

After several follow-up requests for clarification beginning in August, 2003, on May 14, 2004 OIC received a response from ICHEIC indicating agreement with the methodology used by the company. However, in OIC's opinion ICHEIC assumed facts that even the company did not:

- *"Victoria could just as easily have assumed a shorter policy duration of ten years, with a start date of 1933, with the loan being taken out halfway through in 1938. This method would have used lower multipliers and exchange rates and thus resulted in a lower offer to the claimant."*[76] *But the company did not so assume or arrive at this conclusion; ICHEIC did.*
- *In its follow-up response ICHEIC staff stated that the company "could have surmised that the policy had only a ten or fifteen year duration...resulting in a valuation that is either the same or lower than that provided by Victoria."*[77] *But again, Victoria clearly did not so surmise; rather, ICHEIC did.*
- *Finally, according to ICHEIC Victoria could have used "a different policy duration [which] would impact the valuation, and not necessarily in the claimant's favor"*[78] *in*

[76] ICHEIC email, May 14, 2004.

[77] ICHEIC email, June 11, 2004.

[78] ICHEIC email, June 16, 2004.

> *their offer to F.M. (and correspondence with OIC), but again, the company did not. It was ICHEIC that did so in its response to OIC inquiries.*

It is puzzling that ICHEIC would assume facts that a company itself did not assume in its handling of a claim. F.M. was left with the option of appealing the company's offer, but only almost a full year after it was first made. [Note: The average cost to ICHEIC to process an appeal is $1,600;[79] the difference in the offer made by the company and the one calculated by OIC is less than $1,300.]

* * *

As the above example points out, ICHEIC's written Valuation Guidelines do not *and could not* anticipate every possible processing issue, leaving room for different interpretations. In fact, it is unreasonable to exclude the possibility that issues would come up that had not been considered and/or do not fit into the present valuation guidelines, or that those guidelines might need to be adjusted as new situations arise. That is merely the reality of a complex and multi-layered process. Denying that possibility and thereby failing to reconcile identified problems allows for inconsistencies and raises the possibility, and likelihood, that mistakes will be made that could have been prevented by "tweaking" the guidelines where necessary.

When OIC – and others[80] – have asked ICHEIC to consider the merits of outstanding valuation issues like the one raised above or conversely, to explain how present valuation guidelines should be applied to these specific cases, ICHEIC staff has consistently rejected the notion that there were *any* possible outstanding valuation issues that had not been considered.[81] However,

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[79] "…the average cost to process an appeal is $1,600, while awards vary from a minimum of $4,000 to a much larger sum;" minutes of the meeting of the International Commission on Holocaust Era Insurance Claims October 29, 2003, Washington, DC.

[80] In his "Second Report of the President of the Appeals Tribunal to the Chairman and Vice-Chairman of the Commission [ICHEIC]" dated September 24, 2002, Judge Gafni, President of the ICHEIC Appeals Tribunal, wrote:

> **One issue that is not currently considered by the Valuation Guidelines**, however, is the valuation of "pension insurance" which is life insurance under the Commission's framework. In one award, the arbitrator, faced with this question, relied on Article 24 of the Rules which provides that the *Arbitrator(s) shall determine the substance of any dispute, matter or issue raised in an Appeal that is not governed by the Succession Guidelines or the Valuation Guidelines in accordance with principles of equity and justice.* Applying that Rule the arbitrator was able to determine the value of the "pension". **To avoid future doubt a rule for the valuation of a "pension" might be agreed upon and incorporated in updated versions of the Valuation Guidelines" [emphasis added]**.

[81] See for example, ICHEIC Chairman Eagleburger's June 11, 2004 letter to California Insurance Commissioner John Garamendi dated June 11, 2004 (discussed above): "The Valuation Guidelines for claims on German companies were finalized on October 16, 2002, when the Trilateral Agreement [ICHEIC, the German Foundation and the GDV] was signed. The ICHEIC Valuation Guidelines for all ICHEIC claims not covered under the Trilateral Agreement were finalized on October 22, 2002. These are, in effect, contractual obligations. As such they cannot unilaterally be set aside. Negotiations are over; implementation of the Guidelines and ensuring that the companies follow them so that we can finish processing claims as quickly and accurately as possible is what now must concern us."

precisely because the Valuation Guideline are sometimes incomplete or unclear and therefore subject to interpretation and possible revision, such questions were to have been referred to and clarified by an ICHEIC Valuation Committee. The Valuation Committee has not met in several years.

At times this has tended to neutralize the ability of regulators and others to advocate on behalf of claimants with the companies/claims processes, as well as with ICHEIC itself.

Issue #5: Verification Issues

Case Study: *In December 2002, D.C. received payment for a claim on a policy purchased by her father. On March 24, 2004, D.C. received a letter from the Generali Trust Fund (GTF) indicating that upon further review of the same claim "following an update of the ICHEIC criteria," she was entitled to an additional payment. The second payment was – apparently – to be a "top-off" (an additional payment due to changes in the processing guidelines, etc.) Only apparently it wasn't. Her initial payment was for $2,781. Her second payment was for $14,417.*

This case raised several questions:

- What prompted the second review? While OIC obviously had no problem with the outcome of the review, we questioned whether this was an ICHEIC-requested/mandated, or an internal GTF review, and if internal, whether ICHEIC had reviewed the original offer, since there was no indication it had.
- How was it possible a top-off could be so much higher than an initial offer of payment?
- On a systemic level, how many other claims like this one were/are not caught or acknowledged and rectified? This seemed like a very lucky fluke – OIC certainly cannot take any credit for finding a mistake and the claimant, having already accepted the original offer believing it to be the end of the process, would never have had a reason for asking any further questions on this claim/payment.

After raising these concerns with ICHEIC, OIC was informed that:

> the top-up offer on this claim apparently resulted from an internal review conducted by the GTF. However, we also queried this decision for the same reason during the course of our large-scale verification effort that took place in March [2004]. At that time, our database indicated that the decision on this claim had not previously undergone verification by ICHEIC, so we pulled the file, reviewed it, and sent a query to the GTF. But the GTF had already taken action; our query and the GTF's letter "crossed in the mail," so to speak.
>
> The substantial difference between the original offer amount and the topped-up amount goes directly to the base value used to calculate the offer -- the base value should have been about 4 times more than what was originally used. While I wouldn't say that this type of top-up is common, our experience is that it's not improbable, particularly when dealing with early Czech crown or dollar policies.
>
> Because systematic verification of decisions commenced in August 2003, we have been steadily working to verify all those decisions that had been made prior to that date which hadn't undergone review in January 2003. We reviewed 4000+ decisions in March, and have followed up with the companies on all of the cases where we have seen a valuation problem (similar to [this] case). Given that the Valuation Guidelines changed in 2002, we have been working with all companies to ensure that all relevant claims are topped up; however, I note that this process still is ongoing.

> So, rest assured that this error was indeed caught by our team and that we continue to work, going forward, to identify any similar errors which may arise. We'll be reporting more on verification statistics in the next quarterly report.
>
> Hope this answers your questions.[82]

While welcoming this explanation, OIC also believes and has been suggesting for some time that informing the relevant regulator of an ICHEIC review would be helpful so that the regulator would know that ICHEIC has caught what at least appears to have been an error and was in the process of rectifying it.

* * *

OIC has promoted the idea that ICHEIC should take the additional time (according to ICHEIC, a matter of weeks) it would take to verify the accuracy of a company's response *before* an offer/denial letter is sent to a claimant.[83] OIC has argued, and at least three other U.S. state insurance departments concur, that it would be worth the additional wait (considering some people have been waiting for several years), to get ICHEIC-verified decisions to the claimants, especially if that delay affects less than 10% of company decisions that appear not to meet ICHEIC standards.[84]

ICHEIC believes this change would "disrupt" the verification system.[85] ICHEIC staff reported that at the time of his original decision on this question Chairman Eagleburger felt very strongly about claimants not having to wait any longer than necessary, but again, a wait of six weeks - the estimated time it takes to verify a claim (according to ICHEIC staff) - would seem well worth avoiding unnecessary questions and anxiety on the part of claimants, especially when review by ICHEIC staff this close to the end of the process would help eliminate many of those questions/much of that anxiety.

Ironically, as of October 15, 2004 only 59 of Washington State's 760 claims filed through the Holocaust Survivors Assistance Office had been "verified" by ICHEIC.

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[82] ICHEIC email to OIC May 11, 2004.

[83] OIC email to ICHEIC, April 5, 2004.

[84] ICHEIC email, April 8, 2004.

[85] Ibid. "The verification system was created some three years after the claims process was established. Modifying the system at this stage to conduct verification prior to a decision being transmitted to a claimant would represent a fundamental change in the process; such a change would require the agreement of all parties within ICHEIC. More important, such a change would delay further the receipt by claimants of the vast majority of offers that meet ICHEIC standards. Less than 10% of the total number of decisions made to date have been queried by ICHEIC staff through the verification process, and the queries do not necessarily indicate that the company has made an incorrect decision. Were we to instill [sic] another step in the process before claimants receive their decisions, I fear that we would, indeed, create further delay for claimants who already have waited too long. That is why we have designed the verification system as we have, with a constant eye on how to most effectively and fairly get offers to claimants, and at the same time, ensure that there is an ongoing 'quality control' mechanism in place."

Issue #6: Humanitarian Fund & Payments

Background: According to ICHEIC rules, "a claim that names no company, but is supported by documentation or other credible information substantiating the existence of insurance, would qualify for a humanitarian payment," as would claimants "with evidence of policies issued by companies no longer in existence."[86] Originally humanitarian payments were to have been $300.[87]

In December, 2003 OIC requested consideration be given to raising the minimum humanitarian payment to *at least* $500; in our opinion whether $300 or $500 the payment would still only be symbolic.[88] However, making this symbolic payment slightly more generous and therefore more meaningful would engender tremendous good will from people who, as ICHEIC Chairman Eagleburger has repeatedly pointed out, have waited far too long for a resolution of their families' Holocaust-era insurance issues.

In January, ICHEIC disclosed to U.S. insurance regulators that the humanitarian payments would be increased to $1,000, and in March 2004, 15,890 qualified claimants received humanitarian payments of $1,000 for a total of $15.89 million.

Problem: ICHEIC decided to make humanitarian fund payments of $1,000 on *a per claimant*, rather than *per claim* basis. However:

- ICHEIC was established as a claims resolution process, *not* a humanitarian fund.[89] A claimant with more than one meritorious claim should therefore receive payment *for each claim* found to be meritorious. Paying a claimant with, for example, ten meritorious claims a total of $1,000 does not truly resolve the status of the other nine outstanding claims.
- ICHEIC has developed relaxed Standards of Proof.[90] While these standards may be minimal, there are, in fact, standards that a claim either meets or does not meet.
- Thus, for example:

    - **Claimant A** wrote in her claim that her father told her about an insurance policy he had. That claim may or may not meet ICHEIC's standards; based on

[86] Letter from Eagleburger to Congressman Henry Waxman dated April 11, 2002.

[87] At one point ICHEIC staff recommended eliminating even this symbolic "humanitarian" payment, claiming the administrative costs involved in processing these claims – "over $10 million" - were prohibitive. However, plans to eliminate the humanitarian payments were scrapped when an alternative funding plan costing less than $2 million was offered by an American insurance regulator.

[88] NAIC Holocaust Taskforce conference call, December 3, 2003.

[89] "…the ICHEIC mandate is to provide restitution for unresolved insurance claims of Holocaust victims…as opposed to a subjectively determined humanitarian payment," Eagleburger Congressional Testimony, page 23.

[90] ICHEIC document, "Standards of Proof," 15.07.99.

information contained in the claim form, ICHEIC determines whether or not the claim meets ICHEIC's standards for an 8A1 (humanitarian) award.

- **Claimant B** wrote in his claim that his father told him that twelve additional unnamed members of his family also had policies. It is clear that those twelve claims might not meet ICHEIC's standards, and probably shouldn't. Once again, ICHEIC determines that based on information contained in the claim.
- **Claimant C** submitted twelve *separate* claims naming policyholders. Inasmuch as ICHEIC treats each claim separately (or should since claimants expected they would be when they submitted their claims), some of her claims *may* receive offers; some claims *may* be denied; some *may* qualify for and receive an 8A1 payment, and some may not. ICHEIC should not treat the twelve claims in this example as one claim, and make only one humanitarian fund payment.

- There is also the question of how this decision was made, and who was consulted.

  - One of the Jewish representatives to ICHEIC questioned had no problem with ICHEIC's decision limiting payments *to claimants* rather than basing them on meritorious claims. His stated reason was to preserve as much of the humanitarian fund as possible for other purposes under the control of the Claims Conference. Furthermore, according to him because humanitarian payments were raised from $300 to $1,000 people are already getting more than originally promised; ICHEIC is using relaxed standards that makes it easy to qualify, etc. Finally, he argued we should wait to see how many claims this actually impacts.

    While first payments have gone out, there is no reason this issue can't be revisited, particularly if there is agreement between the Jewish groups and the regulators to do so. This final point may be the point of departure to revisit this issue.

  - There appears to be a potential conflict of interest when the same organization which reviews and approves humanitarian payments will also heavily influence the use of any remaining funds in the humanitarian fund. Simply put, the less money distributed through humanitarian payments to claimants the more will be left for "other purposes."

* * *

As noted earlier, to date ICHEIC has paid out nearly $16,000 in humanitarian payments as outlined above. One area of remaining confusion is "Sibling Claims," claims where more than one member of a family could have filed a separate claim but was told not to.

Case Study: In March, 2004 H.E. of Washington State received a humanitarian payment for a claim filed on behalf of her father. Her sister R.W., who resides in New Jersey, and who also filed a claim for her father, was denied a humanitarian payment. OIC asked whether anything could be done about this. ICHEIC replied that:

> While ICHEIC appreciates the details of this case, R.W.'s claim was reviewed in the humanitarian claims process and…was determined ineligible for a humanitarian award. As you know, the humanitarian claims process is built on a per-claimant model and each claimant's claim's are evaluated using established criteria…Given this, ICHEIC is unable to provide R.W. a humanitarian award.[91]

When asked why claims for the same relative/policy by two sisters were not sibling claims, ICHEIC responded, that

> R.W. and her sister filed separate claims. If by "sibling claim" you are referring to cases that…Chairman [Eagleburger] has asked that regulators help flag, again, these regulator lists were requested for cases where claimants (siblings/relatives) filed together (rather than filing separate forms) at the request of U.S. insurance regulators.[92]

ICHEIC acknowledged that if R.W. had withdrawn her claim and deferred to her sister's claim, she would have qualified for the humanitarian payment. OIC maintains that the language used by a claimant in filling out a claim form should not be determinative of the merits of the claim. As another state regulator observed:

> The 8A process is for claimants with the least amount of hard evidence. Any doubt in the 8A criteria should be resolved in favor of the claimant.
>
> Had [R.W.] listed her sister on [her] claim form as an additional heir of the policyholder, the sister would have received an 8A award under the sibling procedure that is currently underway.
>
> Usually the second sibling would be listed as a duplicate claim and treated exactly the same as the primary claimant. If both sisters filed on their common father, these should be duplicate claims.
>
> It is unfair to deny the sister because she may have used slightly different language than R.W. used to describe the likelihood that their father was insured.
>
> It is bad enough that in comparing unrelated claimants, very slight variations of language that basically have the same meaning, result in grants and denials.
>
> In the case of siblings, and in light of the sibling project for siblings who did not file separately, and in light of ICHEIC's usual practice of making sibling claims duplicate claims, this result is absolutely unfair and should be changed.[93]

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[91] ICHEIC email to OIC, September 1, 2004.

[92] ICHEIC email, September 1, 2004.

[93] California Department of Insurance (Leslie Tick) email, September 1, 2004.

The matter was addressed, without success, by U.S. regulators during the NAIC Holocaust Taskforce conference call on September 8.

* * *

A second category of humanitarian claims – claims on companies in Eastern Europe that were nationalized, liquidated or where there is no identifiable successor company – is presently being evaluated. ICHEIC will review the claims in this category to determine "if there is sufficient information to make a humanitarian award on a particular policy in accordance with ICHEIC's Relaxed Standards of Proof and Evaluation Guidelines."[94] First payments of $2.3 million on 128 policies went out in October 2004.[95]

* * *

In 2003, ICHEIC committed $132 million, "to the extent ultimately available, for social welfare benefits to Jewish victims of Nazi persecution, to be distributed over a 10 year period."[96] The time frame was later reduced to nine years. Two yearly distributions totaling approximately $32 million have now been made.[97]

* * *

In addition to the humanitarian fund distributions noted above, ICHEIC is also "exploring a small number of other worthy projects that have been presented to us…with most of the funds available for humanitarian purposes…reserved for the benefit of needy Holocaust survivors worldwide."[98]

So far ICHEIC has agreed to fund two pilot projects: $975,000 for the first year of a "Jewish heritage education [summer camp] program for youth in the former Soviet Union…with a special focus on Holocaust education and remembrance."[99] If this summer's 700 participant pilot program in St. Petersburg is successful it is "expected that ICHEIC will authorize the remaining four years of the program for a total budget of $10.3 million."[100]

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[94] ICHEIC Quarterly Report, May 2004.

[95] ICHEIC web site posting, November 1, 2004.

[96] Ibid, page 22.

[97] Under the revised plan approximately $5.1 million/year of the first two years' allocation funds were to be distributed in the U.S., with $12,000/year allocated to the Jewish Family Service in Seattle for "essential services for needy elderly Nazi victims."

[98] Eagleburger Congressional Testimony, page 22. As the ICHEIC May Quarterly Report notes, "since the claims process is ongoing, it is not possible at this point to determine the total amount that will ultimately be available for humanitarian programs" (ICHEIC Quarterly Report, page 23).

[99] ICHEIC May Quarterly Report, page 23.

[100] Ibid.

The second humanitarian pilot project ICHEIC has approved is the "Service Corps," which "combines Holocaust education for university students with service to their local survivor population."[101] ICHEIC has committed $596,000 to an-18 month pilot program at the University of Miami and six schools in the New York area. If the pilots are successful, "the Service Corps will be expanded to other communities with a willing university and a large survivor population."[102]

ICHEIC is presently reviewing a third funding request to provide Yad Vashem with $1 million per year over 10 years to train teachers in Europe. According to ICHEIC, "this proposal has not been acted upon at this time due to concerns as to whether there will be adequate humanitarian funds available to finance this program."[103]

While all three programs are certainly worthwhile, it can be argued that only the second meets ICHEIC Chairman Eagleburger's criteria of "assisting needy survivors worldwide..." ICHEIC's rationale, and as agreed to by the Jewish representatives to ICHEIC, is "that allocating some amount of the funds available to support the strengthening of Jewish culture and heritage in recognition that the Nazis attempted to eradicate Jewish culture as well as the Jewish people, is a legitimate way of memorializing those Holocaust victims who did not survive."[104]

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[101] Ibid.

[102] Ibid.

[103] ICHEIC response to OIC inquiry, September 23, 2004.

[104] Eagleburger Congressional Testimony, page 22.

Issue #7: Named Claims

Problem: OIC remains very concerned about the issue of named claims that erroneously identified a particular company and were sent only to that company for processing.

Case Study: *H.A. filed a claim with ICHEIC in March of 2000, one of the earliest claims filed from Washington State. H.A.'s claim was filed on behalf of her father, who was deported in February of 1943. As part of her claim, H.A. submitted a letter from a cousin dated June 13, 1946 informing her that her father "had taken out life insurance valued at 12,000 DM." While the letter did not indicate which insurance company the policy was with, in her claim H.A. specified Agrippina, a subsidiary of Zurich Financial Services of Switzerland. However, Zurich determined that the policy was not, in fact, theirs. And so, despite the fact that there is strong evidence a policy existed, H.A.'s claim seems to have reached the end of the line. Under ICHEIC's previous rules, recently revised, this claim would not have qualified for a humanitarian payment. At the same time, unnamed claims with significantly less information suggesting the existence of an insurance policy have qualified for humanitarian payments.*

According to ICHEIC's rules, "the ICHEIC humanitarian claims process was designed in recognition of the fact that some claims cannot be determined with sufficient definitiveness due to the ravages of war and the passage of time. **At this point in time** claims (1) where the claimant **knows the name of the insurer** and (2) which are processed as named company claims - are **not eligible under the humanitarian claims process**" **[emphasis added]**.

In that case, however, at least some claimants – like H.A - might have been better off *not* naming a company which would have resulted in their claims being reviewed by *all* companies selling insurance where they and/or their families lived. Under the old rules, recently changed (see below), being wrong about which company sold their family insurance 60+ years ago would have cost claimants the possibility of receiving even the $1,000 humanitarian payment. Much more importantly, ICHEIC rules still will prevent their claims from being researched further by other companies leading to a possible match and offer.

ICHEIC maintains that it "runs all names from all claims" submitted to ICHEIC ("the claims database") against its policyholder database ("the research database"). However, according to ICHEIC staff its database does not include company electronic policy data. With the exception of the German companies, the companies have released relatively few names – 52,175 out of 519,009, with 45,152 of these names coming from one company (Generali).[105] If named claims naming the *wrong* company are not actually sent to other companies for possible matching, these claims will never be thoroughly screened against those companies' policyholder information; not by ICHEIC because it doesn't have that information, nor by the companies, because they will not receive copies of the incorrectly named claims from ICHEIC.

The view of ICHEIC staff is that claimants who named a company self-defined themselves for the different treatment of their claims and they were told this would happen. OIC has advised ICHEIC staff that it is very difficult to justify the disparate treatment of this class of claimants.

[105] Eagleburger Congressional Testimony, page 28.

As a compromise, ICHEIC's Operations Committee has recommended, and Chairman Eagleburger has accepted the recommendation, that "named claims denied on the grounds of no match or insufficient proof [will] be transferred to the 8A [humanitarian] system."[106] But again, since ICHEIC was established not as a humanitarian process but rather *a claims resolution process* ["…the ICHEIC mandate is to provide restitution for unresolved insurance claims of Holocaust victims…as opposed to a subjectively determined humanitarian payment"[107]], even with the "compromise" of a humanitarian payment, an entire category of claims will remain insufficiently researched, underpaid and unresolved. Ultimately these claims will remain as "unfinished business" for ICHEIC and for the companies.

And even if, as the ICHEIC agreement with the German Foundation specifies, ICHEIC runs all German claims against the 8 million-record electronic database provided by the German companies, there will still be a disparate treatment of non-German claims.

To overcome these problems, OIC has recommended, using the same rationale of "the ravages of war and passage of time," that *all* such claims should be given the benefit of the doubt and be put back in the pool of claims for further review by other relevant companies, *and only then* be given consideration for a humanitarian payment.[108]

It has been argued that this additional research would require extending the life of ICHEIC with resulting costs that ICHEIC has not budgeted for. While sympathetic to the cost-effectiveness issue, OIC maintains that the necessary funds already exist *in the claims fund*; after all, what better purpose could the claims money serve than to process and resolve claims as claimants were led to understand would be the case when they originally filed their claims?

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[106] There is language in the claims filing information for claimants regarding "How We Handle Your Claim" under the section "If you do not name a company in your claim" upon which to base this "compromise":

> Paragraph 16: ""If investigations fail to produce any further evidence of an insurance policy with a particular company, you may, subject to the information you provided, be eligible for a payment from a specific fund established by the Commission...."

The earlier phrase "at this point in time" (see above) coupled with the language cited here would seem to easily allow for a change in the rules to allow the humanitarian fund to cover **all** claims - unnamed or named - providing sufficient information to prove the probable existence of an insurance policy.

[107] Eagleburger Congressional Testimony, page 23.

[108] Letter from Insurance Commissioner Kreidler to ICHEIC Chairman Eagleburger, June 23, 2004. Chairman Eagleburger responded on August 17, 2004 that such claims would in fact qualify for consideration under the humanitarian process. He went on to write, "…at this point in the life of ICHEIC, to re-open the process and order recirculation of named claims to all ICHEIC-member companies, paralleling the process for unnamed claims would add considerable time to the claims review, lengthen further the already much too long time some claimants have waited for answers on the status of their claims, and would have major budget implications. On balance, I do not believe that we would best serve ICHEIC claimants by reversing course on this aspect of claims review…an attempt to deal with this potential problem would severely disadvantage a far larger number of claimants." Letter from ICHEIC Chairman Eagleburger to Commissioner Kreidler, August 17, 2004.

As previously noted, all remaining funds from the claims fund are to be transferred to the humanitarian fund to assist needy survivors and there is a strong desire to maximize those funds. But as ICHEIC Chairman Eagleburger stated in his testimony before Congress last September, ICHEIC's goal is to ensure "that every ICHEIC claim receives a fair evaluation in the most efficient and effective manner possible."[109] In that spirit, shutting ICHEIC down before all claims are resolved *to the extent possible* - and not because of financial considerations alone – would simply be wrong. The time and cost implications to ICHEIC are far outweighed by the issues raised here.[110]

* * *

The issue of named claims also raises questions regarding how denials are communicated to claimants. Besides possibly naming the wrong company, in many cases the reason a named claim was denied is not known (see below). Obviously there are many possible reasons a "named claim" was denied. It is therefore logical to assume that many were declined for "cause," and that many of the "unresolved" claims to date will be resolved through offers of payment, findings of previous compensation, etc.

For example, on a global basis as of September 17, 2004, 23,564 claims named a company. Of these 2,956 (12.5%) have received offers, for a total potential value of $51.70 million[111] and 5,853 named claims (24.9%) have been denied. Denials are therefore running 2 to 1 over offers. In addition, 14,755 named claims remain "outstanding." According to ICHEIC staff about 60% of named claims remain unmatched[112] and many will presumably qualify for a humanitarian payment of $1,000. One hundred thirty-seven claims/inquiries were still being processed as of September 17, and 4,322 remained to be distributed to the companies.

Similarly, as of September 22, 2004 there were 35,456 total U.S. claims. 8,338 of these claims named a company – 3,746 MOU companies and 4,591 non-MOU companies. Of the 8,338 named claims 1,259 (15%) have received offers, 128 are replica claims, and 103 are invalid. Finally, 2,103 claims (25.2%) have been denied, leaving 4,748 claims "still in-process." However, OIC continues to believe unresolved named claims should include the "still in-process" claims *as well as* the "denied claims," recognizing that the majority of the latter will be resolved through offers of payment, findings of previous compensation, etc. (see below).

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[109] Eagleburger Congressional Testimony, page 24.

[110] ICHEIC is presently reviewing a funding request to provide Yad Vashem with $1 million/year over 10 years to do teacher training in Europe. As noted earlier, while certainly a worthwhile initiative, it has nothing to do with assisting needy survivors. Furthermore, Yad Vashem already is doing this work. As noted above, it is unclear whether ICHEIC will have sufficient residual funds to meet this request.

[111] ICHEIC Statistical Report 040917. The number and value of offers declined by claimants should be subtracted.

[112] NAIC Holocaust Taskforce conference call, June 4, 2004.

Issue #8: Matched Claims and Denial Letters

For some time OIC – and presumably other state regulators – have been stymied in their efforts on behalf of claimants to get specific information from ICHEIC/companies as to why an apparent match is not in fact a match (i.e., a name appeared on the ICHEIC website, the claimant filed a claim on behalf of the named, believed-to-be-relative, and then is told by the company indicated that the name on the list is not, in fact, a match, often without many or any details as to why not). ICHEIC, on behalf of the companies, cites "privacy considerations."

This issue raises two problems: heightened expectations, and lack of transparency and accountability. In OIC's opinion, the ICHEIC process should have been at least neutral if not "claimant friendly." Under the present implementation of the rules a claimant is asked to provide additional information to substantiate/support his/her claim. All the company has to do is say "no, this claim is not a match." (In fact, in many cases it appears that information provided by claimants is being used primarily to *disqualify* apparent matches.) OIC believes that a company saying only that "the person named in your claim was not the same person" is not sufficient. Instead companies - without violating anyone's privacy – should be required to provide claimants with specific details as to *why* their apparently matched claim was denied, as ICHEIC's present rules *require* the companies to do.

- According to the ICHEIC document, "How We Handle Your Claim," which was part of the claim filing packet sent to each potential claimant, "If any member company traces a policy matching your claim and decides either to make an offer or to decline your claim, they will write to you, attaching: …<u>any documents traced in their investigations</u>**"**[113]

- According to ICHEIC's Holocaust Era Insurance Claims Processing Guide (First Edition — June 22, 2003):

  INFORMING THE CLAIMANT OF RECEIPT & OFFER/DENIAL (Part E)

  When a company receives a named company claim from the ICHEIC, it will write a letter to inform the claimant that it has started to investigate the claim. If additional information is needed to process the claim, a company may send a letter or call a claimant to request the information. If investigation takes longer than 90 days, a company should send a letter to the claimant reporting on the status of the claim and should send a letter every six months thereafter. <u>Decision letters should contain all of the required documents</u> (listed in this section, such documents vary for awards and denials). Copies of decision letters should be sent to the ICHEIC and, in the case of decisions on claims against GDV companies, to the German Foundation [emphasis added].[114]

Redacting such documents would remove any concerns about privacy. However, despite ICHEIC's rules this is not done in all cases. OIC (and others) have advocated, without success to

[113] ICHEIC document, "How We Handle Your Claim," paragraph 13.

[114] "Holocaust Era Insurance Claims Processing Guide, First Edition — June 22, 2003, page 33.

date, that companies should be required to provide an explanation of why an apparent match to a name found on the list is not a match; failure to do so effectively denies the claimant his/her right to appeal.

* * *

***Case Study**: In May 2002 F.A. filed a claim on behalf of his late father. The insurance company in question, Allianz, acknowledged the existence of a policy, but indicated it could not determine the policy's (face) value, and so in June 2003 made F.A. a minimum offer of $4,000 based on the value of an average German policy at the time. Because F.A. had some knowledge about his father's policy, and concerns about how Allianz had calculated its offer, he appealed the company's offer. While waiting for his appeal to be considered, F.A. received from the ICHEIC Appeals Office a copy of an Allianz company document indicating a policy value of approximately $10,000.*

This document, apparently resulting from ICHEIC independent research, raises several questions:

- In addition to, presumably, providing this document to Allianz (though that is unclear), why was this document not shared with the claimant until *after* he appealed the original offer?
- Why was it not shared with F.A. *earlier* in order to both "level the playing field" and possibly avoid the need for an appeal, as well as time and trouble to the claimant? Not sharing such documentation unfairly benefits the companies, which, again presumably, do receive documents recovered by ICHEIC. Why should claimants not also benefit from independent research intended to help match claims with policies?
- How many other claims have been denied, or received minimum offers, when documents proving the existence and value of policies, may have been in ICHEIC's possession, as this one was since mid-2002 (based on a typed-in date)? Why only disclose and provide such documentation as part of an appeal?

When such concerns and questions have been expressed to ICHEIC in the past, the explanation has been that the potential cost of providing documents to claimants is prohibitive, as well as expressions of concern that releasing documents possibly not related to a claim would be a violation of privacy laws.

Issue #9: Audits and Appeals

Audits: The ICHEIC audit process is "carried out in two stages by internationally recognized accounting firms. Stage 1 audits examine the companies' systems and procedures that are set up to achieve compliance with ICHEIC Audit Standards. Stage 2 examines each company's handling of claims. Oversight of audits is the responsibility of the Audit Mandate Support Group (AMSG)."[115]

As was pointed out in OIC's June, 2002 report, it has always been assumed that ICHEIC's audit process would serve as a "safety-net" for identifying and correcting all, or at least many, remaining problems. According to the latest ICHEIC Quarterly Report (October 2004), all company operations have "been declared Stage 1 compliant with the exception of Generali;"[116] "Stage 2 audits cannot begin until compliance has been achieved under Stage 1."[117] Since claimants can only appeal a company's decision *after* the company has issued a final decision, and a company can only issue a final decision letter after its audit has been completed,[118] the appeals process has been held back as well.

As noted earlier, ICHEIC is now scheduled to complete the processing of all claims by June, 2005. It appears possible, therefore, that not all audits will be completed until *after* the claims processing is completed, too late to have a significant, if any, impact on claims processing. In addition, there is no mechanism to retroactively correct any processing mistakes or significant omissions that may have affected the processing of claims.

Appeals:

Information about the ICHEIC appeals process can be found on the ICHEIC website. Briefly however, ICHEIC claimants have the right to appeal a company's decision "in certain instances."

According to the ICHEIC website:

> There are two independent and impartial appeals bodies that adjudicate appeals:
>
> - The Appeals Tribunal, which will consider appeals on decisions from all member companies, with the exception of Generali, and German MOU company decisions dated after October 16, 2002 (see Appeals Panel below)…

[115] ICHEIC Quarterly Report, May 2004, page 17.

[116] "Generali is Stage 1 compliant with respect only to its East European branches and one of three German subsidiaries…" ICHEIC Quarterly Report, October 2004, page 14.

[117] Ibid, page 16. ICHEIC was expecting to receive a first Audit 2 draft reports on Allianz during May, but the draft report has been delayed until December 2004 or January, 2005. There have similar delays with regard to the other companies as well.

[118] Letter from ICHEIC Chairman Eagleburger to Representative Henry Waxman, April 11, 2002.

- The Appeals Panel, established under ICHEIC's Agreement with the German Foundation and German Insurance Association, which will consider appeals on decisions from German insurance companies, including member companies, dated on or after October 16, 2002…

Both the Appeals Tribunal and the Appeals Panel independently and impartially determine appeals on ICHEIC claims. This is intended as a guarantee that decisions made by the Tribunal and Panel are impartial and in accordance with the rules and guidelines set out for each.

Distinct from those appeals decided through the Appeals Tribunal or Appeals Panel, under the terms of the Implementing Organization Agreement with the Generali Trust Fund, Generali claimants have the right to a second review on their decision. This process is separate from the Appeals Process established by ICHEIC. The Sjoa Foundation and Buysse Commissions also have separate review processes.

Claimants will be provided with the necessary forms to submit an appeal upon receipt of a final decision letter from an insurance company or the GTF. After submitting all appeals forms, appellants will receive an acknowledgement letter. Any relevant additional material related to the claim that had not previously been submitted to ICHEIC will be forwarded to the insurance company for consideration. Appeals on ICHEIC claims are determined by an independent and impartial arbitrator who will take into account all the evidence submitted.

There are no costs associated with the appeals process….

The appeals process should take approximately 6 months from receipt of appeals forms until resolution. This time period may lengthen in complex cases.

Decisions or awards made by an Arbitrator are final.[119]

As of October 29, 2004 the ICHEIC Appeals Office had received 835 appeals.[120] Decisions have been made on 623 appeals, broken down as follows:

The ICHEIC Appeals Tribunal, which considers appeals from ICHEIC member companies, has received 353 appeals and completed 302 cases, finding in favor of the claimant in 128 (42.4%) of those cases.[121]

[119] ICHEIC website, July 23, 2004.

[120] ICHEIC Statistical Report 041029, October 29, 2004.

[121] Ibid.

The ICHEIC Appeals Panel, which considers appeals from the decisions of all German insurers, has received 250 appeals and completed 142 cases, finding in favor of the claimant in 20 (14.1 %) of those cases.[122]

The Generali Trust Fund Appeals Committee, which considers appeals from Generali decisions, has received 232 appeals and completed 179 cases, finding in favor of the claimant in 27 (15.1%) of those cases.[123]

* * *

OIC sees several problems with the present ICHEIC appeals process:

- Because they were set up according to three different agreements, there are three separate appeals processes, creating a redundancy of cost, etc. However, that will not be changed at this late date;
- There is little interaction between the three processes to assure the same standards, etc. are being applied;
- There is poor communication with claimants; the appeals process, as noted above, can take up to six months (or longer);
- Most importantly, there is no mechanism for retroactively applying new decisions on previous decisions; i.e., new decisions/interpretations are not considered precedents affecting previously made decisions

At the October 29, 2003 ICHEIC meeting, it was noted that the appeals process "provides an important safeguard, since claims are processed by the companies and not an independent entity."[124] It was suggested/requested that "appeals decisions…be circulated so that systemic errors will be recognized for claimants who do not appeal."[125] ICHEIC Chairman Eagleburger agreed to raise the issue of publishing decisions with the independent appeals judges, but did not believe that they would be open to the idea. He also agreed to ask the judges about using the ICHEIC quarterly report to highlight systemic issues raised by key cases, and distributing this report to the full ICHEIC. The matter was again raised at the April 24, 2004 ICHEIC meeting. ICHEIC Chairman Eagleburger reported an unwillingness of the appeals bodies to make their decisions available for public scrutiny.

Earlier, however, the Appeals Panel [appeals on decisions from German insurance companies] had written to Chairman Eagleburger indicating that, despite the difficulties involved, "honoring the request for more transparency…the Appeals Panel [had] decided to provide information on the reasons for dismissing appeals…[and] will further reflect on how to improve the reporting of

[122] Ibid.

[123] Ibid.

[124] Minutes of Meeting of the International Commission on Holocaust Era Insurance Claims October 29, 2003, Washington, DC, page 4.

[125] Ibid.

decisions."[126] The Chairman of the Appeals Tribunal [appeals on decisions of ICHEIC member companies], the Honorable Abraham Gafni, expressed a similar willingness to "discuss in his quarterly reports "significant issues which have arisen in Awards."[127] In his "Fifth Report of the President of the Appeals Tribunal to the Chairman and Vice-Chairman of the Commission [ICHEIC]" dated January 14, 2004, Judge Gafni wrote that

> In its reports, the Tribunal has always set out, in general terms, the bases [sic] upon which the Awards were made or Appeals were dismissed. Where appropriate, individual issues have been highlighted, particularly if they required further action by the ICHEIC. The suggestion that individual opinions be published, however, raises the problem of breach of confidentiality which the Tribunal is obliged to protect. While it is true that it is possible to redact opinions, the mere elimination of names will not sufficiently assure such confidentiality. From the Tribunal's prior experience, it is clear that effective redaction would require significant employee time and cost, all of which are currently unavailable. The Tribunal will, of course, **continue to provide as much information as is appropriate so that the ICHEIC is sufficiently aware of the activities of the Tribunal** [emphasis added]. In addition, it will consider and is prepared to accept suggestions on how to improve its reporting in a manner consistent with the concerns expressed above.[128]

In the meantime, the quarterly reports of the Appeals Panel and Appeals Tribunal are available on the ICHEIC website (www.icheic/org).

* * *

In August, 2004 a disturbing incident involving the ICHEIC appeal process was brought to the attention of OIC.

As noted earlier (see page 23, example #1) the family of a now-deceased claimant has received and accepted offers on two claims, but chose to appeal two other offers because the offers were based on the value of an average policy from those times and based on the professional status of the policyholder, the family felt the company offer was too low. The family has not accepted nor received payment for those appealed claims. Nevertheless, on August 13 the family received a letter from the ICHEIC Appeals Panel requesting that they withdraw their appeal because they had received payment for their other claims.

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[126] "The Third Report of the Appeals Panel to the Foundation 'Remembrance, Responsibility and Future,' the German Insurance Association and International Commission on Holocaust Era Insurance Claims," January 4, 2004.

[127] "Third Report of the President of the Appeals Tribunal to the Chairman and Vice-Chairman of the Commission [ICHEIC]," March 12, 2003. Judge Gafni went on to say in reference to a particular set of decisions, "the resolution of these appeals may be a matter of general interest to Commissioners, Alternates and Observers and if the Chairman and Vice Chairman so requests, I will, subject to issues of confidentiality, produce a copy of the redacted Annex for circulation with this Report."

[128] "The Fifth Report of the President of the Appeals Tribunal to the Chairman and Vice-Chairman of the Commission [ICHEIC]," January 14, 2004.

It appears that the ICHEIC Appeals Panel had somehow "lumped" all of the family's claims into one claim - and now their appeals as well - and is suggesting the legitimacy of their appeals is somehow connected to the fact that they have accepted payment on *other* claims/offers. But clearly previous offers should have no impact on an appeal on a different, unrelated claim. The family did not want to sign away its right to appeal. OIC wrote to ICHEIC requesting clarification that this appeal remains outstanding and viable, and that the Appeals Panel will rule on the *merits* of the family's claim, not on the basis of previous unrelated offers or settlements.

On September 6 ICHEIC staff replied that they had looked into this matter and found that while the Allianz offer referred to only one policy, the offer letter referenced two policies. The family's acceptance of the one offer apparently caused some confusion and

> prompted the Appeals Office to write asking if the claimant wished to confirm withdrawal of their appeal. Admittedly, the letter probably should have been more specific about which policy number it was referring to. Apologies for any confusion that may have occurred. Given the usual confidentiality confines that the Appeals Office operates within, I nonetheless understand that the appeal against policy numbers...will continue through the normal appeals process now that the other two offers have been paid.[129]

[129] ICHEIC email, September 6, 2004.

VII. ANALYSIS & CONCLUSION

As noted earlier in this report, the estimated number of and value of insurance policies held by Jews in pre-World War II Europe *should* have resulted in many more claims to ICHEIC. No one would suggest that all claims, regardless of merit, should automatically result in offers. Furthermore, most of the issues raised in this report have already been decided, and are not likely to be re-visited.

Having said that, ICHEIC *should* have been a more neutral and *flexible* claims resolution process. Considering the amount of time since the original policies were sold, etc, ICHEIC should have made a greater effort to give claimants the "benefit of the doubt." Instead, there has been an effort to limit, reject or marginalize entire categories of claims; for example, "lost" claims and incorrectly "amalgamated" claims; humanitarian claims paid on a per claimant basis rather than on the merits of a claim; claims incorrectly naming a company not being fully researched, etc. How can ICHEIC, which has spent so much money – some would say waste – now race towards shutting down motivated in large part by the cost of continuing to process claims? How can this be justified or defended?

At the same time, full discussion by U.S. regulators of many of the issues raised in this report has at times been limited or curtailed by the participating Jewish groups being the "barometer" of legitimacy; i.e., "why does OIC object if the 'Jewish groups' have no problem?" And finally, while some U.S. regulators have viewed these questions as consumer issues, efforts by those regulators to reform ICHEIC have been at times been stymied by a reluctance to get involved in disputes among the various interested Jewish groups.

The OIC's previous report had this to say about the role of the NAIC:

> The NAIC has the ability to reform the ICHEIC process. The ICHEIC was created by the NAIC; 49 U.S. insurance commissioners signed the MOU establishing the ICHEIC in August 1998. Insurance Commissioners representing three states – New York, California and Florida - sit as members of the ICHEIC, and two more commissioners (representing Illinois and Pennsylvania) participate as observers. And yet, the process the NAIC helped to create has apparently allowed the companies participating in the ICHEIC to withhold information and often to renege on other agreements in a manner that would not be tolerated from domestic insurance companies.
>
> The NAIC is uniquely positioned to help reform the ICHEIC process and make it more accountable, transparent and fair. For example, the American regulators on the ICHEIC have the ability, the credibility **and the authority** to conduct or at least oversee independent audits of the ICHEIC companies; after all, that is what insurance regulators do. Not to exercise greater oversight of the ICHEIC process would be an abdication of its responsibility and commitment to Holocaust victims and claimants residing in its members' states who will turn to their insurance commissioners for explanations and assistance should the ICHEIC process totally collapse…

Surely the NAIC can do better.[130]

Unfortunately, little has occurred to change that assessment. On August 14, 2003, New York Superintendent of Insurance and NAIC Holocaust Taskforce Chair Greg Serio convened a meeting between members of the NAIC Holocaust Taskforce and ICHEIC staff in Washington, D.C. However, while it is true that communication, including monthly conference calls, between ICHEIC and U.S. regulators has improved significantly, *for the most part* the regulators still have a marginal role in ICHEIC's decision-making process.

For that reason, an appropriate role for the regulators would be to participate in a final independent audit of ICHEIC to both ensure that the regulators' unique function has been met as well as enhance the credibility and transparency of ICHEIC's work. After six years and well over $90 million in ICHEIC administrative costs, this is the last chance to make sure we got it "right," and that the process established by the NAIC has succeeded in its mandate to "do everything possible to reach all potential claimants and pay Holocaust-related insurance claims in a fair and expeditious manner."[131] The issues and problems outlined in this report provide a roadmap for such an audit.

* * *

This past June ICHEIC's Chief Operating Officer Mara Rudman was asked about the frequent complaints aimed at ICHEIC's operations by survivors and in congressional hearings. Acknowledging that "all sides greatly underestimated the complexity and timeframe of settling claims and that the commission suffered from 'some poor communications,'" she went on to say, "Everybody expected too much…We at ICHEIC have had a lot of ground to make up."[132]

OIC acknowledges the complexity of the challenges which faced ICHEIC. At the same time we do not believe it really was "too much" for elderly claimants to expect that a process they were told to trust by participating Jewish organizations which would look out for their interests and which committed itself to treating their claims with respect and fairness, a process headed by a former U.S. Secretary of State and supported by the U.S. government through two administrations which were so supportive of that process that they helped take away the right of U.S. citizen/claimants to seek redress in American courts ("legal peace") or from administrative action by U.S. insurance regulators (the Supreme Court decision), would honor that commitment.

A commitment was made to claimants – Washington State's and all others – that their claims would be treated respectfully, fairly and thoroughly *to the extent possible*. Ultimately that is the only standard of success that really matters.

As participants in ICHEIC, we must ask ourselves "has that standard truly been met"?

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[130] "Washington State Experience Update and a Review of the Work of the International Commission on Holocaust Era Insurance Claims (ICHEIC)," June, 2002, page 29.

[131] "U.S. and European Regulators Launch International Effort to Settle Holocaust Victim Insurance Claims," National Association of Insurance Commissioner (NAIC) press release, February 15, 2000.

[132] Jewish Telegraphic Agency (JTA), June 15, 2004.

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There is a long Jewish tradition of "Remembering" – both the good and the bad. Many Holocaust survivors tell of the obligation they felt to their families and friends, their villages or ghettos, or entire communities that did not survive, to remember and tell the "story" of what had happened. In many cases, that promise and commitment kept the survivors alive. It is what all of the Holocaust books, memoirs and films are all about, what the commitment to Holocaust education is all about, and what Holocaust commemorations are all about – the obligation to remember and tell others. It is what the effort to reclaim the lost assets of the Jewish people is really all about – not the monetary value alone (although the survivors and the heirs of those who perished have every right to have those assets returned to them) – but also the *value* of the stolen *memories* contained in those possessions – the stories of the people who owned the artwork that hung in those homes, the echoes contained in the silver ritual objects used in the synagogues of Europe, the loving sacrifices that parents made to purchase insurance policies in order to provide what they hoped would be a measure of security for their families' futures.

The *real* Holocaust is a mosaic of the experiences and stories of all those who were caught up in those events – a mosaic and a story that will always have six million pieces missing. But there is real *value* in each and every one of those pieces, in both the stories known to us and those that are only memories.

Despite all the good intentions associated with ICHEIC, for too many claimants, through delays, mistakes and inefficiency – and yes, unmet and perhaps unrealistic expectations – the value of those memories has been discounted and reduced to nothing.